



association for  
the prevention  
of torture

## International **Detention** Coalition

Human rights for detained refugees,  
asylum seekers and migrants



# MONITORING IMMIGRATION DETENTION

## Practical Manual



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of torture



**UNHCR**  
The UN Refugee Agency

**International  
Detention Coalition**  
Human rights for detained refugees,  
asylum seekers and migrants

## ACKNOWLEDGMENTS

The early drafts of this Manual were prepared by Eve Lester, consultant, and revised by Edouard Delaplace and Tanya Norton from APT. The Steering Committee comprised Barbara Bernath (APT), Alice Edwards (UNHCR), Grant Mitchell (IDC), Tanya Norton (APT) and Ariel Riva (UNHCR). The Manual benefited from a broad consultation with a wide number and range of international, regional and national bodies and stakeholders including international and national monitoring bodies, United Nations Special Procedures, international organisations and civil society. APT, IDC and UNHCR express their gratitude to all the experts who contributed to this new publication.

## FOREWORD BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

### Out of sight, but not out of mind

Locking up persons fleeing for their lives or at risk of persecution has become, in some countries, a routine – rather than exceptional – response of governments to managing their borders. It is particularly alarming that children and families are not exempted from this expanding practice, and some spend long periods behind barbed wire or iron bars. Oftentimes, asylum-seekers and refugees are detained in maximum security prisons, alongside very dangerous individuals, or live in substandard conditions, and are treated as though they had committed a criminal offence. At times, they are essentially ‘removed’ from society by being located in remote areas, such as deserts, border areas or even off-shore islands, and out of reach of regular monitoring and inspection. Such places and treatment are not compatible with the universal right to seek asylum, the right that lies at the centre of my Office’s work.

Although irregular migration can challenge border integrity, as well as the efficient functioning of asylum systems, governments have an obligation to treat asylum-seekers as well as migrants in a humane and dignified manner. Regardless of their immigration or asylum status, asylum-seekers and migrants, like all human beings, are entitled to benefit from the ancient writ of *habeas corpus*, or the right not to be detained arbitrarily or unlawfully. Asylum-seekers in detention are among the most vulnerable people with whom UNHCR staff comes in contact. Monitoring makes sure that while they may be out of sight, their circumstances are not out of our minds.

This Monitoring Manual was produced jointly by my Office, the Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC). It hopes to strengthen the monitoring capacity of not only UNHCR protection staff, for whom detention monitoring is a regular and important protection activity, but also of other actors and

bodies with national and/or international mandates to visit places of immigration detention.

The principles and standards set out in this Manual are both preventative and corrective in orientation. Monitoring can help prevent human rights violations at either an individual or systemic level, and it can highlight areas that need improvement to ensure the full respect of fundamental rights to dignity and humane treatment. Access to detention facilities is a first step to preventing abuse.

Offering a practical methodology for carrying out detention monitoring, and drawing on up-to-date international and regional human rights and refugee law standards, the Manual is a step-by-step guide for monitors to use, which they can carry with them to detention facilities. It can also be used as a checklist for governments and detention centre staff as to some best practices, as well as the standards they need to apply at all stages of the detention process. The Manual complements UNHCR's *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), and builds on the APT and IDC's expertise and prolific work in monitoring forms of detention and in advocating for alternatives to detention, respectively. I commend the Manual to you.

A handwritten signature in dark ink, appearing to read 'António Guterres', with a long, sweeping underline that extends to the right.

**António Guterres**

United Nations High Commissioner for Refugees

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## ACRONYMS AND ABBREVIATIONS

<a href="#"><u>ACHR</u></a>	OAS (Organization of American States) American Convention on Human Rights (1969)
<a href="#"><u>ACHR AP</u></a>	OAS American Convention on Human Rights Additional Protocol in the Area of Economic, Social and Cultural Rights (1988)
<a href="#"><u>ACHRP</u></a>	AU (African Union) African Charter on Human and Peoples' Rights (1981)
<a href="#"><u>APT</u></a>	Association for the Prevention of Torture
<a href="#"><u>ASP</u></a>	UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Anti-Smuggling Protocol) (2000)
<a href="#"><u>ATP</u></a>	UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Anti-Trafficking Protocol) (2000)
<a href="#"><u>BPP</u></a>	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
<a href="#"><u>BPTP</u></a>	UN Basic Principles for the Treatment of Prisoners (1990)
<a href="#"><u>BPUFF</u></a>	UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)
<a href="#"><u>BR</u></a>	UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules") (2010)
<a href="#"><u>CAT</u></a>	UN Committee against Torture
<a href="#"><u>CCLEO</u></a>	UN Code of Conduct for Law Enforcement Officials (1979)
<a href="#"><u>CCPR</u></a>	UN Human Rights Committee
<a href="#"><u>CDR</u></a>	Cartagena Declaration on Refugees (1984)
<a href="#"><u>CEDAW</u></a>	UN Convention on the Elimination of All forms of Discrimination against Women (1979)

<a href="#"><u>CERD</u></a>	UN Committee on the Elimination of Racial Discrimination
<a href="#"><u>CESCR</u></a>	UN Committee on Economic, Social and Cultural Rights
<a href="#"><u>CFREU</u></a>	Charter of Fundamental Rights of the European Union (2000)
<a href="#"><u>CMCoE</u></a>	Committee of Ministers of the Council of Europe
<a href="#"><u>CMW</u></a>	UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
<a href="#"><u>CoE</u></a>	Council of Europe
<a href="#"><u>CoE-TGFR</u></a>	CoE Twenty Guidelines on Forced Return (2005)
<a href="#"><u>CPT</u></a>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<a href="#"><u>CRC</u></a>	UN Convention on the Rights of the Child (1989)
<a href="#"><u>CRC-GC</u></a>	General Comments to the UN Convention on the Rights of the Child (1989)
<a href="#"><u>CRIHL</u></a>	ICRC, Customary Rules of International Humanitarian Law
<a href="#"><u>OAUR</u></a>	AU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)
<a href="#"><u>CRPD</u></a>	UN Convention on the Rights of Persons with Disabilities (2006)
<a href="#"><u>CSR</u></a>	UN Convention relating to the Status of Refugees (1951)
<a href="#"><u>CSSP</u></a>	UN Convention relating to the Status of Stateless Persons (1954)
<a href="#"><u>DOM</u></a>	World Medical Assembly – Declaration of Malta on Hunger Strikers (1991) (revised in 1992 and 2006)
<a href="#"><u>DOT</u></a>	World Medical Assembly – Declaration of Tokyo (1975) (revised in 2005 and 2006), Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment
<a href="#"><u>ECHR</u></a>	European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

- ECPT** European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
- EPR** European Prison Rules (2006)
- ERTG** Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention (2012)
- EU-RD** European Union, Directive 2013/33/EU of the European Parliament and Council laying down standards for the reception of applicants for international protection (recast) (2013)
- IACPPT** OAS Inter-American Convention to Prevent and Punish Torture (1985)
- IACPPEVAW** OAS Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994)
- ICCPR** UN International Covenant on Civil and Political Rights (1966)
- ICESCR** UN International Covenant on Economic, Social and Cultural Rights (1966)
- ICPPED** UN International Convention for the Protection of All Persons from Enforced Disappearance (2006)
- ICRC** International Committee of the Red Cross
- IDC** International Detention Coalition
- ILO** International Labour Organization
- IOM** International Organization for Migration
- LGBTI** Lesbian, Gay, Bisexual, Transgender and Intersex
- NGO** Non-governmental organization
- NHRI** National Human Rights Institution
- NPM** National Preventive Mechanism, under the OPCAT
- OAS** Organization of American States
- OHCHR** Office of the UN High Commissioner for Human Rights



<a href="#">OHCHR-TG</a>	OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR Trafficking Guidelines) (2010)
<a href="#">OPCAT</a>	UN Optional Protocol to the UN Convention against Torture (2002)
<a href="#">PBPPDLA</a>	OAS/IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008)
<a href="#">PPMIHC</a>	UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991)
<a href="#">PME</a>	UN Principles of Medical Ethics (1982)
<a href="#">PSR</a>	UN Protocol relating to the Status of Refugees (1967)
<a href="#">RPJDL</a>	UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)
<a href="#">SMR</a>	UN Standard Minimum Rules for the Treatment of Prisoners (1955)
<a href="#">SPT</a>	UN Subcommittee for the Prevention of Torture, under OPCAT
<a href="#">SR Torture</a>	UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<a href="#">SRHRM</a>	UN Special Rapporteur on the Human Rights of Migrants
<a href="#">SRTP</a>	UN Special Rapporteur on Trafficking in Persons, especially women and children
<a href="#">UDHR</a>	UN Universal Declaration of Human Rights (1948)
<a href="#">UNCAT</a>	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
<a href="#">UNHCR</a>	Office of the United Nations High Commissioner for Refugees
<a href="#">UNHCR-DG</a>	UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012)
<a href="#">UNICEF</a>	United National Children's Fund
<a href="#">WGAD</a>	UN Working Group on Arbitrary Detention
<a href="#">WMA</a>	World Medical Association
<a href="#">YP</a>	Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007)



# 1 INTRODUCTION TO THE MANUAL

“ *There is no empirical evidence that detention deters irregular migration, or discourages persons from seeking asylum.*

Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, UNHCR / OHCHR, July 2011.

“ *Migrants who are detained find themselves in an especially vulnerable situation, as they may not speak the language and therefore understand why they are detained, or be aware of ways to challenge the legality of their detention [...] migrants in detention are frequently denied key procedural safeguards, such as prompt access to a lawyer, interpretation/translation services, necessary medical care, means of contacting family or consular representatives and ways of challenging detention.*

Special Rapporteur on the Human Rights of Migrants, UN Human Rights Council, A/HRC/20/24, §15, April 2012.

**BOX 1.1** **IMMIGRATION DETENTION** refers to the deprivation of an individual's liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay or residence in the receiving country.

The rights to liberty and security of person are fundamental human rights, reflected in the international prohibition on arbitrary detention, and supported by the right to freedom of movement. While States have the right to control the entry and stay of non-nationals on their territory, this right needs to be exercised while respecting refugee and human rights law standards.<sup>1</sup>

Today the use of immigration detention as a migration management tool is on the rise in a large number of countries. The detention of asylum-seekers and migrants<sup>2</sup> represents a growing human rights challenge worldwide, despite detention only being permitted as a matter of international law where it is necessary, reasonable, and proportionate to the legitimate purpose to be achieved, and then only after less coercive alternatives have been found not to be suitable in each individual case.

In reality, asylum-seekers and migrants are at times subjected to arbitrary and/or unlawful detention. They may be detained without proper procedures or in conditions that do not meet minimum standards and are unsuited to their particular circumstances. While practices and conditions of detention vary widely between countries and even within countries at different detention facilities, an endemic problem in the immigration context is that detention can, whether intentionally or otherwise, have the effect of denying access to procedures that are critical for resolving the immigration status of the detainee, often with far-reaching human rights consequences. In this connection, administrative and/or judicial review of different forms of immigration detention may not be available. In practice, many governments do not take proper or adequate account of the special or particular protection needs or the individual vulnerabilities of certain categories of immigration detainees.<sup>3</sup>

Immigration detainees are in a position of vulnerability, being outside their countries of origin or nationality, and unfamiliar with the legal context, or even the applicable language. They may have taken long and traumatic journeys to reach the country, including in the case of refugees, having fled their countries of origin on account of persecution, serious human rights violations or conflict.

Finally, immigration detention is often characterized by little or no independent oversight, especially in border zones. In some countries, immigration detention has historically been one of the most opaque areas of public administration.

## 1.1 WHY MONITOR? WHY THIS MANUAL?

Transparency and independent oversight of the public administration of a State are critical parts of any system based on principles of democracy and the rule of law. This is especially true in the case of monitoring the power of the State to deprive anyone of their liberty, not least in the context of immigration detention. Detention is a deprivation of liberty. It must, therefore, comply with the relevant safeguards provided in international law. In this context, the principal objective of this Manual is to provide a practical tool for building and strengthening monitoring and/or inspection capacities of organizations and individuals visiting places of immigration detention.

The very fact that places of immigration detention are visited by monitoring bodies can open up the closed world of custody and contribute to increasing transparency and accountability and strengthening public confidence. These visits can also have an important deterrent effect and reduce the risk of human rights violations such as torture and inhuman and degrading treatment.

A fundamental premise of monitoring is that it ought to take place in the context of a *preventive approach*, which seeks to avert human rights violations at either an individual or systemic level before they happen.

Detention monitoring also takes a *corrective approach*, highlighting areas where improvement is needed. In practice, this means that the Manual offers a practical methodology for identifying and documenting situations where immigration detention conditions fail to meet minimum international standards. Within this broad scope, this Manual will enable monitoring visits to be consistent, effective, independent and evidence-based and, it is hoped, thereby improve conditions of immigration detention and avert the risks of arbitrary or unlawful detention, torture and other forms of ill-treatment, and *refoulement*.<sup>4</sup>

Preventive visits are part of an on-going and constructive dialogue with relevant authorities, providing concrete recommendations to improve the detention system over the short and long term. They can take place before, rather than in response to, any specific event or complaint. Visits can take place at any time, even when there is no apparent problem.

It is important to be aware that visits for the purpose of individual casework can provide information about more systemic or structural issues, and specifically in the immigration context may raise issues of the adequacy of mechanisms for referral to asylum or other procedures.

## **1.2 WHO IS THIS MANUAL FOR?**

This Manual is for anyone or any institution carrying out immigration detention visits. There are different types of monitoring depending on the mandate and purpose of the monitoring body. Some bodies focus on handling individual cases or applications; others take a more general approach, looking at systemic and structural issues.

In the context of immigration detention, an increasing number of monitoring bodies have access to immigration facilities. These include UNHCR itself, as well as other international, regional and national bodies as follows:

## INTERNATIONAL LEVEL

- 
- **The UN Subcommittee for the Prevention of Torture (SPT):** The UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>5</sup> establishes a dual system of preventive visits ‘undertaken by independent international (SPT) and national bodies (NPMs) to places where people are or may be deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.’ The SPT is composed of 25 independent experts and can monitor places of detention, including immigration detention, in any State Party to the OPCAT.
- 
- **UNHCR:** As part of its supervisory responsibility over state implementation of international instruments relating to asylum-seekers and refugees, and pursuant to its mandate for the international protection of refugees, UNHCR has a particular role to play in monitoring immigration detention. UNHCR’s 1950 Statute calls on all States to cooperate with the Office in the exercise of its functions, while States Parties to the 1951 Convention relating to the Status of Refugees (CSR) and/or the 1967 Protocol are in fact obliged to cooperate with the Office, including providing UNHCR with access to places of detention as well as to asylum-seekers and refugees in detention.<sup>6</sup>
- 
- **Human Rights Council Special Procedures** can visit places of immigration detention.<sup>7</sup> These include the Special Rapporteurs on Torture, on the Human Rights of Migrants, and on Trafficking in Persons, Especially Women and Children, and the Working Group on Arbitrary Detention (WGAD). These mechanisms can only carry out on-site visits with the prior authorization of the State concerned.

- 
- **The International Committee of the Red Cross (ICRC)** has been the leading body monitoring places of detention in the context of armed conflicts, in its role of visiting prisoners of war. Later, the mandate was extended, allowing it to visit detainees, with the agreement of the concerned government, during internal troubles or tensions. This includes places of immigration detention.

## REGIONAL LEVEL

- 
- **The African Commission** including the Special Rapporteurs on Refugees, Asylum-Seekers and Internally Displaced Persons in Africa and on Prisons and Conditions of Detention in Africa.
- 
- **The Inter-American Commission on Human Rights** including the Rapporteurships on the Rights of Migrants and on the Rights of Persons Deprived of Liberty.
- 
- **The European Committee for the Prevention of Torture (CPT)** was the first body set up specifically to carry out preventive visits to all places of detention in Member States of the Council of Europe, including immigration detention. The CPT carried out its first visits in 1990.<sup>8</sup>

## NATIONAL LEVEL<sup>9</sup>

- 
- **National Preventive Mechanisms (NPMs)**: OPCAT States Parties are obliged to maintain, designate or establish functionally independent and suitably staffed and resourced NPMs for the prevention of torture. States Parties are obliged to grant NPMs access to all places of detention. This necessarily includes places of immigration detention. In these cases, the NPM has a direct mandate to undertake unannounced visits to places of detention and make recommendations regarding the respect of rights of persons deprived of their liberty. The NPMs are expected to become a critical complement in monitoring immigration detention. Indeed, a significant number of NPMs already perform this role,



in some cases to considerable effect. Under article 19(c) of the OPCAT, NPMs can also ‘submit proposals and observations concerning existing or draft legislation.’

- 
- **National Human Rights Institutions** (NHRIs) have a broad mandate to monitor and promote human rights including those that occur in places of detention. They often have active monitoring roles, including in the context of immigration detention. Some have produced a body of invaluable literature and documentation on immigration detention and represent an important resource in the development of any monitoring programme. Many governments have designated an NHRI as NPM under the OPCAT.
- 
- **Non-governmental organizations** (NGOs) in some countries have authorization to monitor places of detention. Monitoring by civil society is usually characterized by a large degree of independence of the authorities. Because of their independence, their findings and reports often get a great deal of publicity. However, the legal basis for monitoring can often be weak, based on an oral or written agreement with the concerned ministries, or even an individual minister. This leaves the monitors dependent on the political will of the authorities. In some countries, lack of funding even for travel costs can make the task of consistent monitoring very challenging for such independent groups.
- 
- **Parliamentarians** in a large majority of countries have broad powers to visit places where persons, including migrants, are deprived of their liberty.<sup>10</sup> In some countries, this also includes the right to carry out unannounced visits.
- 

None of the existing mechanisms operate in a vacuum and all of them have a specific value added to the complex system of the protection and promotion of human rights. This means that visiting bodies need to look at ways of cooperating and sharing information and, in some cases, reports. Many already coordinate their activities to good effect.

## **BOX 1.2** OBJECTIVES OF THE MANUAL

The specific objectives of the Manual are:

- ➔ To provide a practical tool to assist visiting bodies to monitor all aspects of immigration detention;
- ➔ To improve the quality, consistency and effectiveness of immigration detention monitoring;
- ➔ To provide a framework and benchmarks for monitoring immigration detention conditions that are universally relevant, while encouraging monitors to be mindful of the particularities of the situation they are monitoring;
- ➔ To enable visiting bodies to identify persons in immigration detention who are, or may be, entitled to international protection or other means of regularizing their status and to ensure that their particular needs are met;
- ➔ To provide guidance for follow up interventions, including the establishment of referral mechanisms to appropriate organizations and service providers;
- ➔ To promote cooperative and complementary monitoring practices between different visiting bodies at the national level, as well as between regional and international bodies.

## 2 DETENTION IN THE IMMIGRATION CONTEXT

**“** *In order not to violate the right to liberty and security of person and to protect against arbitrariness, detention of migrants must be prescribed by law and necessary, reasonable and proportional to the objectives to be achieved.*

Special Rapporteur on the Human Rights of Migrants. A/HRC/20/24, §9, April 2012.

**“** *If there has to be administrative detention, the principle of proportionality requires it to be the last resort. Strict legal limitations must be observed and judicial safeguards be provided for. The reasons put forward by States to justify detention, such as the necessity of identification of the migrant in an irregular situation, the risk of absconding, or facilitating the expulsion of an irregular migrant who has been served with a removal order, must be clearly defined and exhaustively enumerated in legislation.*

WGAD, Report to the Thirteenth Session of the Human Rights Council, A/HRC/13/30, January 2010.

Immigration detention is generally administrative in character (though in some contexts it can follow a criminal conviction). Unlike detention within the criminal justice system, it is not meant to be punitive in either purpose or effect. It is, therefore, incumbent on the State to mitigate the loss of liberty as far as possible by ensuring that the treatment and conditions are respectful of the dignity and non-criminal status of immigration detainees.

## **2.1 WHY ARE PEOPLE DETAINED?**

Although immigration detention may be permissible in an individual case, governments often make broad policy justifications for systematic detention of asylum-seekers and migrants that overshadow carefully developed international standards and the requirement for an individual assessment of the necessity to detain.<sup>11</sup> Such policy justifications regularly encompass claims of sovereignty, border control, national security, public safety, and deportation or expulsion. While these policy considerations form the backdrop to many government detention policies, they cannot be used to support the blanket or across-the-board detention of asylum-seekers and migrants. Detention is also used from time to time to provide a means to limit participation in or engagement with society (both socially and economically), to inhibit family reunion, to prevent or deter what is perceived to be undeserved or unjustified migration, and as a means to limit access to lawyers, asylum/migration procedures, and others in the community. These broad policy justifications for detention are not compatible with the international legal framework.

## **2.2 WHO IS DETAINED?**

Persons detained in places of immigration detention may include refugees, asylum-seekers, rejected asylum-seekers, stateless persons, trafficked persons, smuggled migrants, or irregular migrants generally. People may be detained on account of a breach of their conditions of stay (e.g. breach of a prohibition on the right to work, having absconded from an asylum proceeding or having overstayed); because they are subject to criminal charges or other administrative offences related, for example, to unauthorized or irregular entry or stay; or on account of expulsion/deportation procedures.

Detainees may be single men, women, as well as children, including unaccompanied or separated children, and families. The experience of immigration detention has been shown to cause severe physical

and mental health problems and may trigger or aggravate a number of existing vulnerabilities, in particular for those persons with special needs. In all situations of immigration detention, visiting bodies have a critical role to play in monitoring the safety, security, treatment and mental and physical health needs of detainees, as well as their representation and support needs.

## 2.3 WHERE ARE PEOPLE DETAINED?

A ‘place of immigration detention’ covers any place where a person is deprived of liberty on the basis of his/her immigration status. Such places may include:

- designated immigration detention centres;
- removal or transit centres;
- closed reception or processing centres;
- semi-open centres from which day release is or may be permitted;
- airports, ports, transit and ‘international zones’, harbour facilities, islands;
- vehicles, aeroplanes, boats or other vessels;
- prisons, police lockups, or police stations;
- prisons or cells for military personnel, or military bases;
- houses, hostels, hotels and other community-based locations where residents are not free to leave;
- psychiatric institutions and hospitals;
- disused warehouses or private security company compounds;
- or any other place where people are physically deprived of their liberty.

Regardless of the place of detention in which an immigration detainee is held, the detainee’s location must be duly recorded in a central register and once detained, s/he is entitled to inform family members or other appropriate persons of his/her precise location<sup>12</sup> and place of

detention and of any subsequent transfers. In no case should the nature or location of the place of detention interfere with any of the rights of the immigration detainee.

## **2.4 FOR HOW LONG ARE PEOPLE DETAINED?**

Duration of detention varies enormously. In some jurisdictions, the national legal framework is highly permissive, enabling people to be detained for very long periods and sometimes indefinitely. Some of the most egregious examples of indefinite detention have arisen in the context of *ad hoc* detention practices. Where detention is for the purposes of deportation only, the period of detention is more likely to be shorter, justified only as long as the deportation is in process or removal is reasonably foreseeable. However, where detention is for the duration of administrative and/or judicial procedures or removal is not practicable, it can be significantly prolonged. In some jurisdictions, an initial period of detention - for health, identity or security checks - is followed by a judicial or quasi-judicial decision to release or detain.

The duration of detention ought always to be of concern to monitors, not least because of the deleterious effects on the mental and physical health of detainees who are subject to prolonged or indefinite periods of detention.<sup>13</sup> At the same time, it would be dangerous to assume that if detention is short-term, it accords with international human rights standards. Maximum periods in immigration detention need to be established in law.<sup>14</sup>

## **2.5 WHO DETAINS?**

Public authorities engaged in the practice of immigration detention may include police, prison officers, immigration authorities, border guards,<sup>15</sup> the military and security forces, or the navy and coastguard. Also, some States outsource the immigration detention function to private companies, which are often companies that run prisons.<sup>16</sup>

Although the range of agents of detention gives rise to important questions of accountability, in no case can it be said that the State relinquishes or divests itself of its responsibility to ensure that detention in its territory or under its jurisdiction, power or effective control complies with international and domestic legal standards.<sup>17</sup> Some aspects of detention management, including the facility or administration of the facility, might be privately managed and run. These private companies might believe that they are not subject to oversight in the same way as public or State institutions. It is important to inform such private interlocutors that human rights accountability and oversight apply to all facilities, regardless of whether privately or publicly managed. Moreover, it is also clear that responsible national authorities cannot contract out of their obligations under international human rights and refugee law and remain accountable as a matter of international law. Accordingly, States need to ensure that they can effectively oversee the activities of private contractors, including through the provision of adequate independent monitoring and accountability mechanisms.<sup>18</sup>

## 2.6 IMMIGRATION DETENTION AND THE INTERNATIONAL LEGAL FRAMEWORK

International law provides that restrictions on liberty and the exceptional use of detention are only permissible when they are both legal and non-arbitrary. The requirement of legality means that any restrictions, including detention, may only be imposed on grounds prescribed by law and in accordance with procedures authorized by law.<sup>19</sup> Therefore, any immigration detention that is not specifically enumerated in States' domestic law would necessarily be unlawful and impermissible.

The prohibition on arbitrary detention,<sup>20</sup> meanwhile, requires a number of additional safeguards to ensure fairness and non-discrimination. First, the detention must be in pursuit of a legitimate purpose. 'Legitimate purposes' in the context of immigration detention are the same for asylum-seekers and migrants as they are for anyone else: when someone presents a risk of absconding from future legal proceedings

or administrative processes or when someone presents a danger to their own or public security.<sup>21</sup> The criminalization of irregular entry of asylum-seekers and migrants always ‘exceeds the legitimate interest of States’<sup>22</sup> and will therefore be arbitrary.

Second, even assuming that the State has a legitimate purpose for the detention, any immigration detention must be necessary, reasonable and proportionate<sup>23</sup> in all the circumstances of the case.<sup>24</sup> This will require an individualized assessment; therefore any group detention decisions or discriminatory detention of asylum-seekers and migrants will be arbitrary. These requirements of necessity, reasonableness, and proportionality apply to all persons subject to detention of any kind. They apply to all persons subject to immigration detention, regardless of immigration status.<sup>25</sup>

Finally, the detention must be subject to meaningful, enforceable and independent periodic review.<sup>26</sup>

#### **BOX 2.1 UNHCR DETENTION GUIDELINES**

In the case of persons seeking international protection, UNHCR’s 2012 Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention set out the international rules governing decisions to detain such persons and the standards of treatment they are entitled to, namely:

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➔ **Guideline 1:** The right to seek asylum must be respected.

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➔ **Guideline 2:** The rights to liberty and security of person and to freedom of movement apply to asylum-seekers.



- **Guideline 3:** Detention must be in accordance with and authorized by law.
- **Guideline 4:** Detention must not be arbitrary, and any decision to detain must be based on an assessment of the individual's particular circumstances.
- **Guideline 4.1:** Detention is an exceptional measure and can only be justified for a legitimate purpose.
- **Guideline 4.2:** Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose.
- **Guideline 4.3:** Alternatives to detention need to be considered.
- **Guideline 5:** Detention must not be discriminatory.
- **Guideline 6:** Indefinite detention is arbitrary and maximum limits on detention should be established in law.
- **Guideline 7:** Decisions to detain or to extend detention must be subject to minimum procedural safeguards.
- **Guideline 8:** Conditions of detention must be humane and dignified.
- **Guideline 9:** The special circumstances and needs of particular asylum-seekers must be taken into account.
- **Guideline 10:** Detention should be subject to independent monitoring and inspection.

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The national legal framework governing detention provides important context for the purposes of monitoring. Monitors will not always be in a position to assess whether detention in any given case is arbitrary or unlawful; such an assessment is a question of both law and fact and is ordinarily a matter for the courts. Nevertheless, even if such an evaluation is beyond the capacity or remit of the monitors, it is important for them to be clear about the applicable legal standards and aware of the risk that detainees may be arbitrarily or unlawfully detained in places of immigration detention.

In particular, where detention in an individual case has been found to be arbitrary or unlawful as a matter of domestic or international law, or where there is known to be a more widespread or systemic problem of such detention, the deprivation of liberty ought to be understood not only as a violation of the prohibition on arbitrary or unlawful detention, but also as providing a context in which there is an increased risk of other violations of detainees' rights, including torture and other ill-treatment.

# 3 IMMIGRATION DETENTION: A MONITORING METHODOLOGY

Monitoring immigration detention requires taking into account the specificities of the detention regime in the monitoring strategy (sections 3.1 and 3.2).

Visiting places of detention is the principal means to access first-hand information on the treatment of detainees, their conditions and the functioning of the places of detention. Carrying out visits is a three step process that includes:

- The preparation of the visit (section 3.3)
- The conduct of the visit (section 3.4)
- The follow up to the visit (section 3.5)

## **3.1 MONITORING PLACES OF DETENTION IN THE IMMIGRATION CONTEXT**

### **3.1.1 The Challenges of Monitoring Immigration Detention**

One of the key challenges to effective monitoring of immigration detention is that legal frameworks in force in some countries may not meet minimum international standards against arbitrary and unlawful detention. This means that the central problem for the detainee may be the detention itself. This is why this Manual regards monitoring the fact of arbitrary and unlawful detention, and in particular the possibilities of prolonged and/or indefinite detention, as equally as important as – and indeed integrally linked to – treatment and conditions of detention. Of course, visiting bodies do not ordinarily have the power to order the release of an individual from detention. In that sense, their role is usually limited to making recommendations and following up. Indeed, they can make recommendations by identifying, documenting and reporting on the effects on detainees of the experience of detention (such as the duration of detention or access to procedures), and therefore of deficiencies in the legal framework of detention. Referrals to other bodies that have the authority and role to intercede on behalf of individuals in detention may be part of the follow-up strategy.

Other challenges in a given country relate to the scale of the problem, including the number of people detained and the number of places of detention. Places of immigration detention that are located in remote

#### **BOX 3.1 MONITORING**

In this Manual, ‘monitoring’ describes the process of periodic or regular examination of immigration detention through on-site visits. The examination can involve all or certain categories of immigration detainee held in one or more types of detention, and may involve a single issue or be a more comprehensive visit.

or otherwise inaccessible areas also pose particular challenges. Furthermore, denial of access to places of immigration detention, or access with restrictions, represents a challenge in some contexts and will also need to be a consideration when developing the monitoring strategy.

### **3.1.2** What does it Mean to Monitor Immigration Detention?

Some organizations visit for the purpose of individual casework which can provide information about more systemic or structural issues, and in particular in the immigration context may raise issues of the adequacy of referral mechanisms to asylum or other procedures.

An essential element within any monitoring system is frequent, unannounced visits by independent bodies to places where asylum-seekers and migrants are held. Not only do such visits ensure a measure of accountability, they also serve an important preventive purpose such as minimizing the risks of *refoulement*, illegal or unlawful deportation,<sup>27</sup> torture or ill-treatment. On the other hand, visiting bodies may rely on announcing visits in advance to ensure the presence of the person in charge of the centre. Announcing visits can be a basis for establishing a constructive dialogue with the authorities, founded on mutual respect and confidence. Deciding on what type of visit to conduct, and when, is a crucial element of developing a long-term monitoring strategy. Over time the approach applied can create a change in culture on the part of the detaining body. All visits ought to be followed by written reports to the detaining authorities and others, accompanied by recommendations.

A fundamental premise of monitoring is that it takes place in the context of a preventive approach, which seeks to avert human rights violations before they happen. Immigration detention monitoring can examine some or all aspects of detention, and needs to recognize that they are interconnected and, depending on the context, can mutually reinforce or, equally, undermine or weaken protections against breaches of standards. The aim is to identify systemic or structural concerns.

### **BOX 3.2 ASPECTS OF DETENTION TO BE MONITORED**

Monitoring therefore examines the following aspects of detention:

- The legal framework that establishes the basis for immigration detention.
- The administrative framework that governs the implementation of the immigration detention scheme at an operational level.
- The living conditions of immigration detainees.
- The detention regime as regards activities.
- The treatment and care of immigration detainees.
- The day-to-day operation, organization and management of the place of detention and its effect on detainees, as well as staff.
- An immigration detainee's access to professional care, advice and assistance, including: • Medical care; • UNHCR, other international or non-governmental organizations and/or consular assistance; • Legal assistance.
- An immigration detainee's access to: • Family; • Asylum and immigration procedures; • Information relating to their rights and the basis for their detention; • Effective complaints mechanisms and remedies before a judicial authority.<sup>28</sup>
- The quality and character of relations between the immigration detainees, staff, management and the detaining authorities; and
- The staff–detainee ratio and staff working conditions.

By monitoring all these aspects of immigration detention, which together give a picture of the overall conditions of detention and treatment of detainees, it is possible to determine whether the detention environment presents risks of human rights violations and what steps need to be taken by authorities to respond to these risks.

It is important to remember that visits alone cannot solve all problems. Some of the root causes of problems may lie in the legislation, the public policies or the institutions themselves.

### **3.1.3** Monitoring Immigration Detention: Vulnerabilities

Immigration detainees are vulnerable at many levels. In general, immigration detainees are deprived of their liberty for periods of non-specific duration as a result of a lack of or unclear immigration status. This lack of information about their individual situation increases their vulnerability. They are outside their country of origin or former habitual residence; they often do not speak the language and may not have a strong family or community support network available to them. Quite apart from feeling unsafe in the immigration detention environment, their sense of insecurity is often exacerbated by fear of what the future holds and where that future will be. They may also believe, rightly or wrongly, that those who exercise power over them by detaining them also hold the key to their future. There is a real risk that those on the upside of the power equation may misuse the real or perceived implications of such a power imbalance.

In addition, monitors need to be particularly alert to the issue of multiple vulnerabilities. Immigration detainees are already in a vulnerable situation and this can be further exacerbated for persons with special needs or risk categories (such as women, children, including unaccompanied or separated children, members of different ethnic/tribal/social groups detained together, victims of torture or trauma, persons with disabilities, the elderly, LGBTI individuals, or those with urgent medical needs).<sup>29</sup>

### **3.1.4** Obtaining Access for the Purposes of Monitoring

This Manual is intended primarily for visiting bodies that already have access to detainees and places of immigration detention by law or by virtue of an existing or established mandate, memorandum of understanding or other agreement.<sup>30</sup>

Where authorization is provided, it is essential that the terms and conditions of access are clearly outlined in writing to ensure that the nature and scope of the access is clear to all parties.

In addition, depending on the monitors' strategy and mandate, the possibility of bringing in electronic devices such as a camera or recording equipment can be discussed. This has to be very carefully assessed against needs and whether there is a real value added for achieving objectives.

Even with the broadest mandates, visiting bodies need to ensure that they use their authorization respectfully and strategically. Much will depend on the strength and stability of the mandate, the agreement reached with the authorities on access, the type of place of detention and the issues that are being addressed.



### BOX 3.3 ACCESS TO PLACES OF DETENTION

Drawing on existing mandates and monitoring standards, negotiation of the terms and conditions of access needs to address and, as far possible, incorporate the following:

#### → Access to places:

- access without restriction to all places of detention;
- liberty to choose the places of detention to visit;
- liberty to choose the locations inside the place of detention to visit.

#### → Access to detainees:

- private interviews with immigration detainees without witnesses, if necessary with the assistance of an interpreter;
- access to all detainees within the place;
- liberty to choose which detainees will be interviewed;
- assurances that no sanction will be ordered, applied, permitted, or tolerated against any detainee or member of his/her family who communicates with the visiting body; and
- the possibility to conduct follow-up visits.

#### → Access to staff and others working in the place:

- private interviews with staff members, if necessary with the assistance of an interpreter.

#### → Access to all necessary information:

- all information on the immigration detainees, including admission and medical registers and other documents in line with data protection principles;
- Timing, length and notice of visits;
- visits may be with or without notice;
- visits with notice may be at short notice, liberty to decide the timing and length of a visit, having regard to the need to respect the orderly operation of the place of detention at all times.

#### → Follow up to the visits, including the intent to produce a report (public or internal) on the findings of the visits.

### **BOX 3.4    GUIDING PRINCIPLES OF MONITORING**

There are some overarching considerations when monitoring, namely: understanding the context, knowing the standards, and staying within the mandate. Moreover there are a number of guiding principles of monitoring, which visiting bodies need to keep in mind and respect at all times. Set out below are the guiding principles considered essential for the effective fulfilment of the monitoring responsibility, particularly in the context of immigration detention. Adhering to these guiding principles minimizes the risk of the monitoring process being ineffective or inadvertently heightening tensions and anxiety in an immigration detention environment:

- Do no harm!
- Exercise good judgment
- Respect the authorities and the staff in charge
- Respect the persons deprived of their liberty
- Be credible
- Respect confidentiality
- Respect security
- Be consistent, persistent and patient
- Be accurate and precise
- Be impartial, objective and independent
- Be sensitive
- Be professional and behave with integrity
- Be visible

### **RESPECT THE “DO NO HARM” PRINCIPLE**

Immigration detainees are particularly vulnerable and their safety always needs to be kept in mind by monitors, ensuring they do not take any action or measure that could endanger an individual or a group. Particularly in cases of allegations of torture or ill-treatment, the principle of confidentiality, security and sensitivity needs to be kept in mind.

## 3.2 DEVELOPING A MONITORING STRATEGY: KEY ELEMENTS

To maximize the preventive impact of detention monitoring, the specific context of immigration needs to be taken into account at an early stage, especially when the visiting bodies are defining their monitoring strategy, including a programme of visits.

The following elements ought to be considered when developing a monitoring strategy:

### 3.2.1 Understanding the Overall Immigration Detention Context

Monitors need to research and gather as much background information as possible about the social, political and legal context in which immigration detention takes place. This means:

- Understanding the national legal framework of detention: it can be helpful to list the international human rights instruments that the country in question has ratified and check whether these are reflected in the national laws.
- Understanding who is and who is not detained: are they mainly asylum-seekers, stateless persons, trafficked persons, irregular migrants, or other persons detained for immigration reasons? This can be very revealing in terms of whether alternatives to detention and pre-detention screening procedures are being applied effectively. Likewise, the team will need to consider whether the detainee cohort is composed partly, primarily or entirely of people of particular national, ethnic, cultural, linguistic or religious backgrounds. This will enable monitors to better understand and respond to the needs and dynamics of the detainees.

### **3.2.2** Defining Clear Monitoring Goals and Objectives

The goal of a detention monitoring programme is, in broad terms, to ensure that immigration detainees:

- are not arbitrarily or unlawfully detained;
- have effective access to protection and other immigration procedures; and
- are held in conditions that meet minimum international human rights standards.

Monitoring is a process that can be both prohibitively expensive and labour-intensive, and it is therefore crucial to develop a monitoring strategy that contains clear and achievable objectives so that it will not collapse under the strain of over-ambition. These objectives need to be framed as specifically as possible, and in a way that will yield measurable outcomes. In preparing for a specific visit, more detailed objectives can then be set.

### **3.2.3** Setting an Overall Timeframe for the Monitoring Programme

It is desirable that a long-term timeframe is set for a cycle of monitoring visits as frequently as possible, including follow-up and return visits. This full cycle needs to be long enough to allow for monitoring and reviewing the sustainability of change.

### **3.2.4** Selecting Places of Detention on which to Focus

The visiting body could do an initial mapping of all the places where asylum-seekers and migrants may be detained. Such places may include, among others: designated immigration centres, removal or transit centres, closed reception or processing centres, semi-open centres; airports; international zones, vehicles, aeroplanes, boats or other vessels, prisons, police stations, houses, hostels, psychiatric institutions or any other place where people can be physically deprived

of their liberty (see Section 2.3). It is important to recall that immigration detention is often practised in remote locations.

The various stages of immigration detention need to be monitored, such as arrival and border facilities (including international ports or airports), transfer processes, departure or removal centres, and in some cases post-removal or reception facilities in a country of origin or other third country.

The selection of places to visit could be based on the risks (both potential and actual) to people held in places of immigration detention, or to capture in the first instance the main detention facilities where the majority of persons are held. These might include places where:

- little information is available;
- there are many persons in situations of vulnerability;
- there is a high turnover of asylum-seekers and migrants deprived of liberty, such as international zones, maritime ports, or airports;
- there is a high risk, i.e. a well-documented history of problems (such as recent complaints, reports from other organizations).

### **3.2.5** The Nature and Duration of Monitoring Visits

As previously noted, in light of the specificities of immigration detention, some visits will need to be carried out unannounced to minimize the risks of *refoulement*, forced deportation or torture or ill-treatment. Unannounced visits also have the benefit of reducing the chances of the facility being temporarily improved for the purposes of the visit (e.g. detainee treatment, food service, or general conditions of detention). The visiting bodies will need to decide whether to conduct only unannounced visits or a combination of unannounced and announced. The duration of the visits will depend on many variables including the size of the places and whether an interpreter is needed, which can double the time required for an interview. In all cases monitors will need to retain a degree of flexibility to ensure that they can be responsive to any unexpected issue or incident.

### **3.2.6** The Frequency of Monitoring Visits

Experience shows that monitoring visits will be much more effective as a means of preventing torture, ill-treatment, or *refoulement*, and achieving sustained improvement in all these respects, if they take place frequently.

### **3.2.7** The Composition and Size of the Monitoring Team

While this Manual promotes a team methodology as best practice, a single monitor or a two-person team may be the standard practice of a particular organisation, depending on resources and other considerations. The size of the monitoring team will also depend on a number of factors relating to the scope of the visit. Either way, the approach in this Manual should guide the monitoring visit. These will include the objectives of the visit, the amount and quality of information already available, and the size of the place of detention and its detainee population. In all cases, however, one person should be identified to head the team and be responsible for coordinating the visit.

It is desirable that a monitoring team draws together a range of different professional backgrounds, as well as personal attributes such as listening skills and sensitivity to cultural diversity. It is also a strong asset to have a gender balance and in this particular context it is of paramount importance that different ethnic and religious backgrounds are reflected in the visiting body's membership. Furthermore, a monitoring team will be greatly helped by having members with relevant language skills (even if they are not fluent and interpretation is still required) as it will be easier to gain detainees' confidence.

**BOX 3.5 FREQUENCY OF VISITS**

Decisions about how often a place of detention needs to be visited will depend on several factors including:

- 
- ➔ The type of immigration detention facility and the anticipated duration of detention in that location. Places which ought to be visited more frequently include:
    - those in which arrival interviews and procedures take place, such as in international zones, border posts and maritime ports, because there is often a high turnover in such places;
    - those from which deportations or removals routinely take place, because such places often hold people subjected to accelerated procedures which increase the risk of refolement;
    - those where detainees are held for prolonged periods;
    - those that ordinarily hold the criminally accused or convicted (including prisons, police stations, police vans and lock-ups), both because they may expose immigration detainees to mixing with criminal populations, and because staff may not be equipped to deal with immigration detainees.
- 
- ➔ If the visiting team apprehends that there may be sanctions against detainees who have spoken to members of a monitoring team. In such cases, a speedy follow up visit or other immediate action will be crucial.
- 
- ➔ Other considerations could include the overall mandate and capacity of the visiting body. For example, some bodies' mandates may cover many types of places and refugees, asylum-seekers and migrants may have to be integrated into a broader strategy.

### **BOX 3.6** PROFILE OF THE MONITORING TEAM

- broad variety of backgrounds (health, psycho-social, legal, child, communication experts)
- personal attributes (cultural sensitivity, listening skills)
- appropriate gender balance
- variety of ethnic or religious backgrounds
- relevant language skills

Special attention needs to be paid to including in the monitoring team:

- Persons with an immigration or refugee law background, who understand the protection standards applicable in the immigration detention context;
- Qualified health professionals, to assess the particularly sensitive health issues associated with immigration detention;<sup>31</sup>
- Interpreters when relevant, in particular to conduct private interviews with immigration detainees when possible;
- People with other useful professional backgrounds including social workers, child experts and psychologists.

### **3.2.8** Coordination between Visiting Bodies

As noted, in some countries the practice of immigration detention has grown very swiftly. This calls for coordinated and collaborative monitoring, whereby immigration detention monitoring bodies complement each other's work and avoid duplication, possibly through a formalized network. In this way, critical aspects of the monitoring function can be maintained through, for instance, an effective system of referrals, and thoughtful timetabling of visits. Coordination is also



relevant at the follow up stage; unless a conscious decision is made to do so, visiting bodies ought to avoid duplicating their follow up. This can become especially problematic if the recommendations for change are not consistent with one another.<sup>32</sup>

Where the monitoring is undertaken by a national body, coordination should also be sought with regional and international bodies such as UN Human Rights Treaty Bodies, UNHCR, the Special Procedures of the UN Human Rights Council, the ICRC, or regional monitoring bodies such as the CPT (see Section 1). The OPCAT, in particular, emphasizes direct contact between the NPMs and the SPT.

Ultimately coordination will enhance the efficiency of the monitoring programme and will also make it more efficient in the eyes of the authorities.

### 3.3 PREPARATION OF THE VISIT

Preparation of the visit itself is key. A poorly planned or prepared visit, or one that fails to comply with monitoring standards and principles, or one that is not otherwise conducted in accordance with the monitoring methodology may even be damaging. Good preparation for a monitoring visit will set aside sufficient time to:

- Research, gather and collate information;
- Define the objective(s) of the visit;
- Prepare the team for their collective and respective tasks;
- Ensure material and logistical preparation.

### **3.3.1** Research, Gather and Collate Information

- Become familiar with the national and international norms and standards;
- Gather background information on the immigration detention context;<sup>33</sup>
- Gather specific information on the place to be visited.

#### **Specific information on the place would include:**

- laws and regulations, including the internal rules and any specific regulations accorded to groups in situations of particular vulnerability (see Section 4.8);
- the capacity of the place, the number and the breakdown of immigration detainees by gender, age, particular vulnerability (as above) as well as details of any other people detained in the place;
- details of the responsible authorities, management and staffing, and lines of accountability (including an organigram, if possible);<sup>34</sup>
- the current immigration status of the detainees, such as the number of asylum applications, information on the new arrivals,<sup>35</sup> those pending or finalized, the reviews, appeals or other remedies exhausted, pending removal/deportation, detention on grounds of breach of conditions of stay as well as the length of detention;
- details of the languages spoken by detainees (to determine whether and how many interpreters will be required and whether there may be ethnic, cultural or religious tensions that need to be factored into the selection of interpreters);<sup>36</sup>
- information obtained during earlier visits or from other sources (other national, regional and international visiting bodies, NGOs, media, released detainees, families of former or current detainees, lawyers, doctors, charity associations, volunteers working in places of detention, etc.);
- any other relevant information.

The monitors need to proactively collect information from different sources, including contacting the authorities in advance for factual information.

It can also be very helpful to meet with other actors<sup>37</sup> who have regular dealings with the persons in detention and who will therefore have useful information to share. Initial face-to-face contact may be made in advance of or during the visit, with follow up being possible at a later stage.

Based on the information gathered, it will be necessary to collate, categorize and prioritize the issues that need to be addressed and the sources from which information will further need to be gathered. Ultimately, the information will enable the team to frame the visit around the most critical issues and define the objectives.

### **3.3.2** Define the Specific Objective(s) of the Visit

It is crucial to be clear from the outset on the objective(s) of the visit. These could be to:

- understand and analyse how the immigration detention facility operates and identify particular issues;
- focus on a specific theme (monitors may have received or heard of complaints on a particular issue, such as the length of immigration detention or lack of access to medical care);
- follow up on a previous visit to check on a specific aspect of detention, individual cases or implementation of previous recommendations by the body or other bodies.

The objective(s) of the visit will also vary according to the mandate of the visiting body and overall objectives of the monitoring strategy, as well as the issues and concerns that the preparation identifies as needing to be addressed.

### **3.3.3 Make Sure the Monitors are Well Prepared**

Part of the preparation for a monitoring visit is, of course, ensuring that monitors are well prepared as a team, and for the individual tasks that have been allocated to each member including the interpreter(s). This is the responsibility of the team leader as well as each individual team member.

#### **Each team member needs to:**

- be familiar with the goals, objectives, work plan, tasks and timeline of the monitoring visit;
- be well informed about legal standards and operational issues of concern in the place of detention that they will be visiting;
- share the responsibility for gathering, reviewing and exchanging details of documentation in advance, taking account of specialist knowledge and skills; and
- be well prepared for what to expect while remaining open-minded, and in particular be aware of the potentially very fragile psychological state in which they may find some or many of the immigration detainees.

### **3.3.4 Ensure Material and Logistical Preparation**

#### **Documentation and equipment**

It is important to ensure that monitors bring the proper equipment, personal IDs, and copies of all the necessary credentials, permissions and identification documents to carry out the visit. These may include identification badges and/or letters from the relevant authority, a copy of the law granting access to the visiting body, any relevant correspondence, and the phone numbers of key contacts for following up immediately on emergency matters or in case of a problem with access.

Other documents could be a prepared checklist on detention conditions<sup>39</sup> as a means of guaranteeing standardized collection of information by the team, and a pamphlet for detainees on the visiting body and its mandate in relevant languages. This can be helpful as long as it is used in a flexible manner.

### Visibility and a respectful dress code

Managing perceptions is vital in the context of detention monitoring. Monitors do not only need to be objective, impartial and independent; they also need to be perceived to be so. They need to make their independence clear, for example by outlining to staff and detainees the visiting body's mandate and methodology. In addition, monitors can wear some visible form of identification (such as a vest or a badge), and ensure that such identification is clearly displayed and easily distinguished from any form of identification worn by the authorities and/or staff. It is important for monitors to look as though they are authorized to be there as well as clearly marking their independence from the authorities and management.

In addition, the 'correct' dress code has cultural implications, concealing potential pitfalls with regard both to the detainees and authorities.<sup>40</sup> There is no golden rule that applies in every country or every situation, but it is vital to dress respectfully and in accordance with the context. If people feel respected, they are more likely to be respectful themselves.

## Logistical preparation

Visiting bodies need to allow enough time and flexibility to accommodate the visit and not to underestimate the logistical preparation involved in planning a monitoring visit. This includes the following:

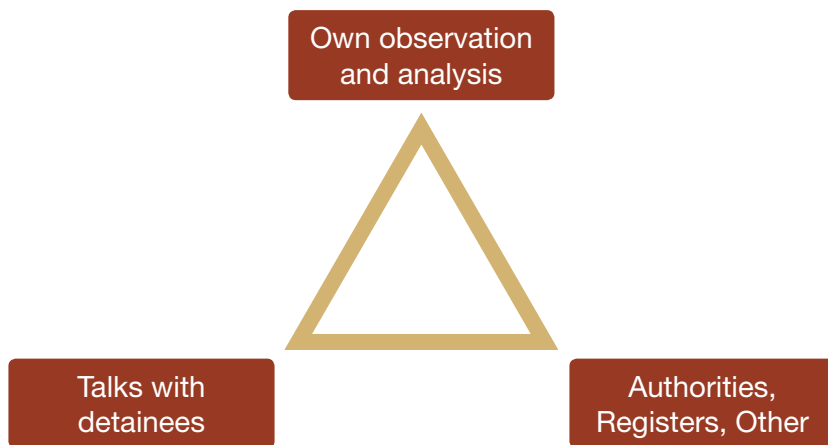
- If necessary, announcing the visit and settling on dates (between the monitoring team and detention management as appropriate);
- Ensuring that the place of detention is accessible on those dates (e.g. seasonal variations can make some places of detention inaccessible due to weather conditions);
- Checking any security issues in conflict or otherwise insecure regions;
- Checking what can be brought into the facility such as recording or computing devices (some facilities have restrictions or require advance clearance);
- Organizing travel and accommodation;
- Ensuring that interpreters are available and that travel and accommodation arrangements are made for them, as necessary.

## 3.4 THE CONDUCT OF A VISIT

The conduct of a visit is the key stage in the monitoring process.

To properly examine the conditions of detention and treatment of detainees, the monitors need to cross-check different sources of information (a process known as ‘triangulation’), as no information should be taken at face value. Sources include:

- The point of view of the detainees themselves;
- The point of view of the authorities, the staff, and the different professionals taking care of the detainees;
- Monitors’ own observations and analysis.



### Triangulation of information

Visits usually include the following steps, some of them being interchangeable:

- The initial talk with the head of the centre;
- Overview of the premises and observations;
- Reviewing registers and other documents;
- Observing procedures;
- Interviews with detainees;
- Interviews with staff;
- The final talk with the head of the centre.

The importance given to each step will depend on the type of visit. Monitors ought not to take this sequence as a rigid model, however, but need to be prepared to be flexible and to react to whatever situation they find, changing their plans and usual order of activity as necessary.

### **3.4.1** Initial Talk with the Head of the Centre

The visit to the immigration centre ought to begin with a conversation between the visiting body and the person in charge, or the deputy. This is the first step in establishing a dialogue with the authorities. This visit may or may not have been announced. If it was, much of the introductory formalities can be dealt with in advance of the visit, though some aspects may benefit from being reinforced, and may therefore be carefully reiterated.

If the visiting body has already carried out several monitoring visits to the place without encountering any serious hindrance, the introductory formalities may be limited to courtesies and basic updates and, in the absence of specific adjustments to the monitoring programme, reassurance that the conduct of the visit will be along the same lines as in the past.

When appropriate, the team may decide to split in two, with one or two members (usually including the team leader) meeting the head of the centre or director while others start with the substantive visit and immediately check the most high risk areas (such as isolation units and health facilities which are areas where abuses of human rights are likely to take place).

Finally, monitors need to agree on a time, date and venue for the final meeting with the director, when they will provide a summary of the outcomes<sup>41</sup> of the visit and raise any matters requiring the director's urgent attention.



### **BOX 3.7 INITIAL TALK WITH HEAD OF CENTRE**

The initial talk is one source of information (of many). This discussion provides an important opportunity to:

- Introduce the visiting body, its mandate and the members of the team.
- Explain the goals and objectives of monitoring visits, and this visit in particular.
- State the anticipated duration of the visit (including buffer time so there is flexibility to respond to the unexpected).
- Explain the working methods, including in particular:
  - what the team expects to be able to do and where it expects to be able to go,
  - that actual and perceived independence of the team is essential, underscoring the need to move freely about the place of detention unaccompanied,
  - how the team will work (e.g. subgroups dispatched within the facility),
  - that all interviews ought to take place in private,
  - that principles of privacy and confidentiality govern the work of the monitoring team and the use of information gathered, whether documentary or through oral testimony.
- Provide assurances that monitors will conduct themselves appropriately throughout the visit and with due regard for the internal rules and security procedures and considerations. Receive a briefing on these rules and procedures (e.g. in event of fire, riot, etc.).
- Ask for recent and specific information (such as whether there have been any notable changes or events and whether there are any detainees with special needs).
- Ask the person in charge for their opinion about the challenges they encounter in their work and possible solutions.

### 3.4.2 Overview of the Premises and Observations

During the first visit, it is particularly important to see all areas of the premises. A short general tour of the entire facility can be made by all the members of the team. It may be carried out with the Director or an official able to give useful information about the layout of the premises and provision of services. It may be helpful to map out or obtain an existing plan of the premises; this can be a useful tool in interviews with detainees and staff, including for the purposes of cross checking information.

The tour of the premises will enable monitors to gain a first impression of the physical environment as well as the general atmosphere and mood of the place. The tour can cover the following:

- The premises and their layout;
- Physical security measures (external and internal, including fencing, security doors and walls, separation between different parts of the place of detention);
- Reception facilities (for detainees as well as visitors);
- Sleeping facilities;
- Shower and toileting facilities;
- Catering and dining facilities;
- Laundry facilities;
- Medical consultation and care facilities;
- Legal consultation facilities;
- Facilities for religious worship;
- Visiting facilities;
- Indoor and outdoor recreational facilities;
- Library and quiet study areas;
- Work and workshops;
- Staff facilities;
- Separation, safe room and other internal management and disciplinary facilities.

During the course of the general tour, monitors can make a note of particular issues, including identifying persons in a situation of vulnerability to interview in private for follow up during the remainder of the visit.

After the general tour, monitors need to confer briefly and in private, and, if appropriate, could then divide into smaller groups, each with their own area of responsibility, and specific premises (such as reception, medical care) can be revisited and followed up by a more thorough examination of the conditions.

All information gathered in the course of the initial tour of the premises needs to be cross checked with information provided during private interviews with both detainees and individual staff members. For example, monitors could ask detainees and staff which are the three best and worst places in the facility and why.

### **BOX 3.8** SECURITY CONSIDERATIONS

Nearly all places of immigration detention will have written internal rules intended to ensure and maintain security and good order. As a general proposition, it is prudent to observe the internal rules. Monitors will need to be, nevertheless, somewhat circumspect if security is cited as grounds for restricting or conditioning their access to a place to any part of it, or to particular detainees.

Although the non-criminal status of people held in places of immigration detention should inform security assessments, this does not remove all security risks. In any closed environment where people are held against their will, and especially in a place where the negative effects of deprivation of liberty are strongly in evidence, tensions can run high and personal security may be an issue, as in the event of fire or riot. Places of immigration detention are no exception, especially where detention policies and practices lead to high levels of anxiety and uncertainty.

Any restrictions that staff subsequently advise needs to be demonstrably necessary for the monitors. Ultimately, it is the responsibility of the monitors, and principally the team leader, to decide what to do.

### **3.4.3** Reviewing Registers and other Documents

Registers and other documents are important sources of information about the detainees and the place. Consulting this documentation at the beginning of a visit (or if possible in advance) can be useful, in particular if the visit is to take place over several days. The information obtained from this documentation can then, if necessary, be verified during the visit.

In order to understand as clearly and thoroughly as possible the day-to-day regime and functioning of the place, monitors can, as a first step, request access to (and, where possible, copies of):

- The internal rules of the facility: are they available in several languages spoken by the detainees?
- Are schedules posted indicating mealtimes and other activities? Are they available in several languages spoken by detainees?
- Staff rosters (if possible indicating staff structure/profile, numbers and gender breakdown).

If there are any allegations of ill-treatment made, it will be important to be able to refer back to this information.

Monitors ought always to be alert to the possibility that entries in a register may have been falsified or altered.

Monitors also need to check if there are any other registers that the place of detention uses.

### **3.4.4** Observing Procedures

Monitors should be able to observe and understand the processes that operate within the detention environment. A review of the formal processes and records, cross-checked with the monitors' own observations and testimony of what happens in practice, will assist in ascertaining whether there are any major concerns.

**BOX 3.9    REGISTERS**

Registers and protocols that will be of particular interest in the context of immigration detention include:

- Entry and exit registers of detainees, including the type of immigration status (such as having lodged an asylum claim);
- Protocols for assessing risks and particular vulnerabilities;
- Protocols for accessing protection and immigration procedures;
- Protocols for accessing external advice and support;
- If they exist, registers of disciplinary measures or possible solitary confinement;
- Medical registers;
- Register of incidents and/or events (such as use of force);
- Protocols for initiating complaints;
- Release and deportation/removal registers.

The monitors can check procedures, rosters and activity schedules, and can note the day and time of any rosters or activities that will take place during the course of the monitoring visit. If, during the course of the visit, particular rosters or activities cannot be observed but are highlighted as problematic, it may be worthwhile to schedule a follow-up or return visit accordingly.

As an example, one may decide to observe the processes of the arrival, reception and registration phase. For asylum-seekers and stateless persons in particular this is one of the points of highest vulnerability.

### 3.4.5 Interviews with Detainees

The most important part of the visit is the time spent talking with the detainees and hearing directly from them about their experience of the conditions and treatment in detention. The interview is an objective inquiry into matters that may be of considerable delicacy and complexity. It needs to be sensitive, respectful, and attuned to cultural, religious, age, and gender and diversity factors.

When interviewing people in immigration detention, it is important to remember that they are in a highly abnormal environment, which has more than likely had a negative effect on their sense of self and well-being. As this Manual emphasizes, every person who is deprived of liberty is vulnerable; and any place of detention is an environment where individuals are vulnerable *vis-à-vis* the authorities. Effects that immigration detention can have on people include: acute stress, anxiety and fear; loss of any notion of time; memory lapses or blackouts; obsessive thoughts; exacerbation of pre-existing mental health conditions; post-traumatic stress disorder (PTSD); depression and violent behaviour including self-harm. Detainees affected in these or other ways may present in a way that is very confused.

Further casual or informal conversation with detainees is an invaluable part of building confidence, as well as gathering information.

#### Group interviews

The value of group interviews to a monitoring visit is that they allow contact with more detainees. However, since there is no confidentiality, group interviews exclude the possibility of discussing more sensitive issues (such as treatment, relations with staff and other detainees). In addition there is a risk that one or two people dominate as the 'leaders' of the group and speak for the others, sometimes because they can speak the local language and may be receiving special treatment or privileges from the staff. Consequently, group interviews are inadequate on their own.

**BOX 3.10 PROTECTING SOURCES AND INFORMATION<sup>43</sup>**

During the course of a visit, monitors may need to revisit strategies in place for protecting sources. Detainees should be asked if they have any concerns for their own safety. If they do, the interviewer needs to explain the team's strategies for protecting the sources of information gathered. Depending on the situation, this might include interviewing a representative number of people to ensure that particular sources of highly sensitive information cannot be identified, or keeping personal details separate from testimony. Interviewers must never refer explicitly to statements made by one detainee when interviewing another. The interviewer needs also to seek input from the detainee and then make an assessment as to whether a return visit would be necessary or appropriate as a safeguard against sanctions and reprisals.

Talking with a group is a useful way of identifying common problems, identifying informal leaders, and getting a sense of the atmosphere of the place, the mood of the detainees, the dynamics of the population, and the culture of the institution. Since immigration detention settings are often mixed-sex environments and include family groups, it may be desirable to conduct sub-group interviews with men and women separately, as well as with family units or with groups based on country of origin, sex or age.

It is a good idea to fix the duration of group interviews beforehand. While the conversation needs to be free flowing, if they get out of hand they can detract from the monitoring task and take up an inordinate amount of time. Following the general introduction of the monitors and the visiting body's mandate, a group interview ought to begin with an open question about what members of the group perceive to be the main problems in the place of detention. This is particularly important where the visit is the first monitoring visit. The responses are likely to trigger further lines of inquiry, some of which can be pursued immediately while others can be followed up in private interviews.

As the monitoring visits become more established, group interviews can be more focused. However, it needs to be borne in mind that an immigration detainee population is likely to be changing regularly, a factor which may significantly impact on group dynamics as well as individual and collective concerns. As with any other kind, information gathered at group interviews ought to be cross-checked in other ways; during private interviews, through the team's own observations, through documentary evidence and by consulting other sources.

### **Private interviews and managing expectations**

A private interview with an immigration detainee is an opportunity not only to gather information about his/her experience of daily life in detention, but also to find out how. As has been noted earlier, immigration detention usually arises from a person's irregular entry or presence in the territory of a State other than the State of which they are a national or habitual resident. Its duration is often subject to contingencies that may be driven by the determination of one's identity and/or immigration status rather than being time-specific, even where the law makes provision for detention to have a maximum duration. The reasons and responsibility for this uncertainty may be difficult for detainees to grasp and may therefore contribute to the perception that their liberty is subject to a discretionary power that lies in the hands of anyone perceived to be in a position of authority or influence. This heightens detainees' sense of vulnerability and powerlessness *vis-à-vis* the staff, management and higher authorities, and may also heighten their expectations of the monitoring team. Unless the visiting body to which the team is attached has judicial or quasi-judicial authority, the team must be careful to disabuse detainees of any perception or assumption that they hold such power. It is the responsibility of the interviewer to manage those expectations professionally, firmly and thoughtfully, attentive to time and resource constraints, as well as to the need for flexibility and for the detainee to have an adequate opportunity to articulate his/her preoccupations. It is also important to make sure that the interview is not interfering with the interviewee's access to any rights or services (such as mealtime, visit time, or access to the library).



## Informed consent and confidentiality of interviews

Individual case information gathered during the course of an interview requires informed and explicit consent of the detainee. S/he must be informed of the specific purpose of the data collection and in what way it will be processed after the interview. This concerns in particular whether it will be shared with any third party. In principle, individual information must be treated as strictly confidential, and ought only to be disclosed in accordance with the specific purpose and on terms to which s/he has agreed.

At the same time, and irrespective of the consent, it remains the responsibility of the monitors to assess the threats to the person providing information and to weigh up the potential risks and benefits of any processing of personal data of detainees. Extra care is to be taken when communicating with children, through interpreters, or with people who are illiterate. In this connection, monitors ought always to err on the side of protection and, in the case of children, take account of their best interests. This may require additional steps to be taken to ensure anonymity.

A recommended practice is to develop an ‘informed consent form’ to document that all of the above was explained and that the person consented to the interview. There could be a specific box to tick as to whether the person consented to their name being used, or to the details of their case being used under anonymity.

## Who interviews?

There are two options: either to conduct interviews individually or in pairs. Working in pairs has the benefit that it can be a more supportive, effective and accountable way to work at the same time as providing some measure of safety in the event of a security incident. It is advisable to have a clear division of tasks (such as one person leads and the other takes notes). It is not recommended to have more than three people (including an interpreter) interviewing, as this may intimidate the detainee and will also make it difficult to manage the interview.

### **BOX 3.11 SELECTING INTERVIEWEES**

Depending on the objectives of the visit, consideration could be given during the planning stage to mixing selection strategies such as:

- ‘random selection method’: for instance observation during the initial tour of the premises (e.g. in the yards) to identify persons who could be interesting to interview later on in private; random selection from the register (e.g. one in every five persons);
- basing a selection on specific criteria, for example choosing the newcomers, specific persons in situations of vulnerability, detainees with reported injuries or records of self-harm, ‘accidental’ injuries, use of force and isolation measures; or random selection from the register.

As already noted, the gender composition of the visiting team is a critical consideration. It is especially important for interviews in private. In cases of allegations of rape, sexual abuse and other violence, the victims, male or female, ought to be permitted to choose the sex of their interlocutor. Since an interviewer may not know in advance that such allegations will be made, if possible detainees ought to be asked ahead of interview if they have a preference for a male or female interviewer and where relevant a male or female interpreter, and this would need to be accommodated as far as possible.

### **Selecting interviewees**

In some cases, monitors will have to choose who to meet individually in private interviews. Those selected need to be as representative as possible of the different categories of detainees at the site. In small facilities with few people, it is recommended to apply the ‘all or nothing’<sup>44</sup> principle, in order to protect detainees from being seen as selected by or seeking contact with monitors or observers. Monitors ought also to take care to talk not just to those individuals who seek contact with

them<sup>45</sup> or to those proposed by staff. However, no detainee should feel compelled to speak with monitors.

In the selection process, it is useful to map the risks within the immigration centre. For instance, persons who are from a particular country and/or minority which has been reported as suffering discrimination ought always to be included, especially when the focus of the visit is on discrimination.

### **Where to interview?**

In relation to all the foregoing points, the choice of location for the private interview is crucial. It needs to be and feel safe, be respectful of the individual's dignity, be in a location that cannot be overheard and be sufficiently separate to maintain privacy and confidentiality. Avoid locations associated with staff and management, such as their offices, and do not feel obliged to take directions from staff and management as to where to conduct private interviews. Ask the detainee if there is anywhere s/he would prefer to meet. The detainee could be reminded of the importance to the interviewer that the detainee is in a place where s/he feels as safe and as at ease as possible. Depending on the facilities, such places might include lawyers' consulting rooms, living quarters (but not communal or where others may be present), recreation or visiting rooms, courtyards or outdoor recreation areas, or a library.

### **Starting the interview**

At the beginning of an individual interview with a detainee, the interviewer should introduce himself/herself, the other member (if present) and the visiting body to which they belong, as well as any interpreter(s) present. This introduction is the point at which the members of the team will need to gain the confidence of the detainees and to put them at their ease. Detainees must be given a reasonable opportunity to introduce themselves and tell their story. As part of the introduction, interviewers can also actively encourage and welcome questions and requests for clarification at any time during the interview.

### **BOX 3.12 INTRODUCTION TO THE INTERVIEW**

The introduction to the interview can:

- Underscore the visiting body's independence;
- Explain the purpose and parameters of the monitoring visit;
- Explain what the team can and cannot do, in order not to create false hopes or unrealistic expectations (such as that the team can influence individual case resolution and status);
- Remind detainees that this is an important opportunity to provide information to the monitoring team;
- Explain that a complaint or allegation might trigger a corresponding need to verify and corroborate information provided through other interviews or examination of documents;
- Explain that follow-up fact- and cross-checking will only be with the express agreement of the individual concerned and will be in a form that will not compromise rights to privacy and confidentiality.<sup>46</sup>

### **Conducting the interview**

When interviewing detainees, monitors need to keep in mind their choice of language and expression. Their language must be as clear, simple, and unambiguous as possible, and their demeanour respectful and relaxed. Monitors are advised to be careful not to make assumptions about the individuals they are speaking to and what they are saying and to be attentive to, rather than critical of, what they perceive may be embellishments, exaggerations or untruths. It is important not to limit or influence the detainee's response. As such, it is recommended that questions are open-ended rather than leading; that is, designed

to elicit information rather than to put ideas into the detainee's head. Interviewers need to be ready to ask for more detail and be prepared to ask the same question in different ways (which may be for the benefit of the interpreter as well as the detainee). During the course of the interview, the monitors need to try to retain the detainee's focus on a particular line of inquiry, but remain open to the discussion leading elsewhere. If the line of inquiry does go off track, it may be necessary to flag the issue for follow up or bring the conversation back to where it was at a later time.

It is important to acknowledge and manage distrust, suspicion and reticence, whatever the cause (such as bureaucratic dysfunction and corruption). A detainee may be deeply suspicious and reticent, and may have good reason to be. Not only can this affect the detainee's relationship with staff and management, it can also affect the monitoring team's ability to establish rapport, confidence and trust with the detainee in a private interview.

Unless there is a specific and pressing purpose to the private interview, it ought generally to cover the full range of issues affecting immigration detainees, and document the detainee's own observations and experience, both positive and negative.

### **BOX 3.13 AIDES MÉMOIRES**

As an aide mémoire, rather than as a formal framework, a checklist for the group or individual interviews provides a very useful tool for systematically ensuring that all the important issues are covered. However, interview processes ought always to ensure that there is enough time and flexibility to enable detainees to speak more freely and spontaneously about their concerns. In this connection, monitors need to be aware that, if used too rigidly or mechanically, not only can checklists be too formalistic and disengaged, but they also risk being reminiscent of certain patterns of interrogation and cross-examination. This is to be avoided at all costs.

### **BOX 3.14 RECORDING DEVICES**

If the visiting body has permission to bring recording devices<sup>47</sup> into the place of detention (cameras, cell phones, tape- or video-recorders), the interviewer will need to weigh up the risks and benefits of obtaining electronic records of part or all of the information they gather. The risks (and benefits) may be protection-related: sources are more easily identified, the content is vulnerable, even if the use of recording devices is authorized there is a risk they may be confiscated, or on the positive side, an electronic/digital record may provide added protection. They may equally be about encouraging or inhibiting the discussion, viz. an interviewer who does not have his/her head down taking copious notes has a better chance of establishing a good rapport with the detainee, recording may increase the pace of the interview, or the detainee may be reluctant to talk when it comes to sensitive issues. Whatever the case, it is imperative that the express consent of the detainee (either written or recorded) is sought and obtained. Note also that the detainee can be reminded that s/he is entitled to ask that the recording device be turned off at any point. Monitors ought never to use hidden recording devices.

### **Working with interpreters<sup>48</sup>**

Access to reliable and independent interpreters is crucial in the context of immigration detention. Depending on the languages spoken by detainees (and, for that matter, staff or other persons who may have relevant information), it is often necessary for the visiting team to be accompanied by one or more interpreters. Interpreters need to be selected carefully, with an eye not only to gender balance and professional competence, but also to any cultural and religious considerations that may affect the quality of the interview. Interviewers ought, in particular, to be extremely careful about using others such as detention staff, co-detainees, friends or family members; that is, people who may lack experience or objectivity, or who may have a vested interest in the outcome of the interview.

It is extremely important that the role of the interpreter is clear; both during the talks with the authorities in charge of the place and during private interviews with detainees. The interpreter does not lead any conversation and as such needs to be visible to both interviewer and detainee, but sitting to one side.<sup>49</sup>

Working with interpreters is a particular skill, and requires thoughtful and concise questioning and insightful listening. The accuracy of interpretation is critically important. The way in which a question is phrased and the argumentation line followed by the interviewer can have a significant effect on the respondent and the interpreter must be aware of such nuances. An immigration detainee needs not only to have confidence in the interviewer, but also to trust the interpreter. In this regard, it is the responsibility of the interviewer to set the ground rules and manage the interview, and to make clear to the detainee that the interpreter also has a duty of confidentiality. Although it seems obvious, it is important to remember that the meeting is between the interviewer and the detainee. As such, the focus needs to be on establishing eye contact and rapport with the detainee, not the interpreter.

### **BOX 3.15** INTERPRETERS

Interpreters have an obligation to respect privacy and confidentiality. Their selection needs to have regard to the dynamics at play in the place of detention, including social, cultural, religious and political difference; depending on the situation, careful vetting of an interpreter's background may be necessary. In a closed environment, particularly in isolated areas, interpreters can become either very powerful or very vulnerable people (or both) because of the confidential information to which they have access. As a consequence, it may be necessary to consider managing these issues through, for example, regular rotation of interpreters or ensuring that interpreters are not the same as those used on a regular basis by the staff and management. If possible, monitors ought to take the time to get to know interpreters and develop a rapport with them.

Finally, the interviewer needs to be alert at all times to the non-verbal communication (although one needs to be careful in drawing conclusions or meanings) and subtle dynamics that may be at play between an interpreter and a detainee, including body language, facial expressions and eye contact (or lack of it). Here too, it is important to note that many detainees will have some knowledge of the primary language of the interview, despite being more comfortable with an interpreter. They may, for example, understand the language, but not feel comfortable speaking it.

### **3.4.6 Interviews with Staff**

Staff may be interviewed to establish primary information or for the purposes of verifying or cross-checking issues raised by detainees or others. Many of the same interview techniques and principles apply as in interviewing detainees. The well-being of the staff and management working in places of detention is not only important in and of itself, but also has a direct bearing on the sense of well-being and safety of the detainees. Staff and management have not been deprived of their liberty, but they may be stressed and anxious, may have witnessed distressing incidents, and may even have been victims of aggressive or violent behaviour. They may, of course, also have perpetrated or acquiesced in acts of intimidation, ill-treatment or neglect. They may take pride in and enjoy their work, or they may find it unrewarding, underpaid and even depressing.

Generally speaking, members of staff serve two functions: maintaining safety and security, and delivery of services. Whether these functions are carried out by different staff groups will depend on the size and nature of the place of detention. Information about both functions will be relevant to the monitoring team. Some members of staff may be more reticent than others, and may view the monitoring team as a threat. Nevertheless, it is important to persevere. The demeanour of the staff and their receptiveness to scrutiny may tell a story in itself, pointing to the culture of the detention environment. One must remember that the members of staff are integral to the daily life of detainees.



The monitoring team will need to make its own judgment, but it may be appropriate to have a group interview with some staff, being mindful of hierarchy. The principles ought to be along the same lines as those for group interviews with detainees. In particular, they provide an opportunity to identify people with whom private interviews could be undertaken. If an individual staff member approaches the team and requests a private interview, it may be because they have sensitive information to share. It may also be a defensive measure by someone who fears they may have been accused of ill-treatment. Whatever the case, the team needs to ensure that it organizes private interviews not only with staff members requesting them. This is because staff may also need to be protected from sanctions and reprisals.

In the same connection, a staff member may request to meet with members of the monitoring team outside the place of immigration detention. The team ought to handle such requests with care, as measures may need to be taken to protect the individual staff member. It must, for example, be careful to ensure that the individual does not receive unnecessary attention in the place of detention, and that a suitable place outside the facility is chosen, where the risk of surveillance is minimal. The same measures to protect identity and information are to be taken as with detainees.

### **3.4.7** Final Meeting with the Head of the Centre

Given the importance of constructive dialogue to the monitoring function, every monitoring visit must end with a meeting with the director, or person in charge of the place of detention. This is important at a number of levels: as a courtesy, to communicate key findings, to identify issues for follow up, and to raise cases requiring urgent intervention to prevent *refoulement*, torture or other forms of ill-treatment. The monitoring team needs to meet together beforehand and agree on the agenda and content of the meeting. The meeting ought to take place at a pre-agreed time at the end of the monitoring visit.

During the final meeting the monitoring team ought to provide a summary of its findings to the director.<sup>50</sup> The director's response is an opportunity to understand better the culture of the place of detention. If the director is open to dialogue, this can stimulate a discussion in which s/he expresses a view about the conditions of detention and the detainees, and reasons for any deficiencies in conditions. Given that the next step is to draft a report and make recommendations, it would be useful to invite the director to express a view on what improvements could be made and how. The monitors can inform the director when to expect to receive a written report and who else will receive it.

If the monitoring team has identified serious issues, including evidence of *refoulement*, denial of access to protection or immigration procedures, or human rights abuses, these need to be addressed through the responsible authorities. In the first instance, this provides a safeguard against the risk of sanctions or reprisals against detainees or staff who have provided information. Secondly, issues relating to *refoulement* and access to procedures are matters normally dealt with by the central immigration authorities.

In the event that no specific problems have been identified, the final meeting with the director can be a formality and more conversational in nature.

### **3.5 AFTER THE VISIT**

A monitoring visit is not an end in itself; rather, it is one part of a process aimed at improving the treatment of immigration detainees and the conditions of their detention. The visit itself is primarily for the purposes of information gathering. Although the importance of a visiting body's presence as a preventative measure can never be underestimated, in many ways the follow up is just as important, and arguably more so. It needs to be a form of gap analysis between what is expected and what the actual situation is. It is this gap which needs to be looked at further. This is the point at which meaningful change can be made.

### 3.5.1 Set up a Team Debriefing and Debriefings for Members

#### Team debriefing

It is recommended that the team meets during the course of the visit for intermediate debriefings to compare and triangulate information (checking one source against the others), as well as after the visit to discuss and agree on findings. The team leader is instrumental in fostering debriefings and ensuring the coherence of the visit. He/she is usually in charge of note taking during the debriefings.

#### Individual and group debriefings

As noted above, visits to places of immigration detention can be extremely demanding and sometimes deeply affecting, especially if members of the monitoring team witness people in a highly distressed state or engaging in acts of protest or self-harm, or some other unanticipated crisis incident.

If possible, it is advisable that members receive some training in crisis management strategies, which would highlight the importance of debriefing. All monitors ought to be required to undergo periodic

#### **BOX 3.16** AFTER THE VISIT

As a general rule, after the visit the visiting body should:

- set up a team debriefing and debriefings for members;
- review and analyse the visit's findings and prepare an internal document;
- promptly produce an external report for the responsible authorities that outlines the visiting body's findings with actionable recommendations;
- closely monitor the implementation of the recommendations.

debriefings, even if some, or even all, individual team members do not show signs of exhaustion or distress. Ideally, debriefing will be carried out both individually and as a group, and be undertaken by suitably qualified and experienced personnel.

### **3.5.2** Analysis and Internal Document

The visiting team should collate and analyse all the information gathered during the course of the monitoring visit and prepare an internal document. The internal document may need to follow a format that enables comparative analysis of practices, patterns and trends (both positive and negative) across multiple monitoring visits or overtime. It represents the visiting body's most comprehensive record of the visit and will be a vital resource for return visits. It needs to be well organized, carefully referenced, and thoroughly analysed so as to be as accessible as possible for subsequent visits. Information that is not adequately analysed or logically filed very quickly becomes lost information.

From the internal document, the visiting body can examine the information gathered against the benchmarks of relevant legal standards and/or good practice. If this is not the first visit, it ought to note any indicators of improvement or deterioration since the last visit.<sup>51</sup>

### **3.5.3** Reporting

Reports are one of the most important tools that a visiting body has at its disposal for protecting detainees and improving their situation. Although the powers of visiting bodies usually fall short of enforcement, the power of a visiting body to issue a report and make recommendations is significant. This is recognized in their mandates, whether at a national or international level. Such reports provide a basis for dialogue with government on the issues of concern, and an on-going reference point for future follow up. It is preferable that decisions whether to issue public reports are made in advance of the visit and communication with the authorities, but good reasons may later emerge for keeping such reports internal.<sup>52</sup>

**BOX 3.17 INTERNAL DOCUMENT**

The internal document would include:

- general factual information about the immigration centre;
- general information on the visit itself, including: the members (names), the date, the length of the visit, the aims and objectives;
- the key information obtained during the visit (e.g. the main problems identified, analysis and key findings, follow up actions by the authorities and visiting body, issues for follow up or verification at the next monitoring visit);
- recommended frequency of visits (including provisional date for next visit) and a list of contacts;
- confidential information that is not intended to be shared externally but needs to be recorded for use in relation to possible follow-up visits.

The visiting body needs to determine its own strategy regarding reporting, which will depend on the circumstances in which monitoring takes place and the issues that arise. Ultimately the visiting body must ensure that the detaining authorities are informed of the outcomes of its visits; in this connection, oral briefings are insufficient.

All reports ought to be based on carefully documented materials of individual visits. Content is ultimately a decision for the visiting body. However, they need to record the composition of the monitoring team, the date and time of the visits, the reason for conducting the visits and follow-up visits. Reports themselves must also be dated. They need to include the objectives of the visit(s) and summarize the monitoring methodology, including verification and cross-checking techniques. As a minimum, they need to summarize key findings thematically (positive and negative), ranked according to the seriousness and urgency of the issues and relevant recommendations and, as appropriate, report on their implementation.

### **BOX 3.18 FIVE GENERAL PRINCIPLES OF REPORTING**

- ❶ Accuracy and precision;
- ❷ Disclosure of personal information only with express and informed consent, and as necessary;
- ❸ Consistency of language and terminology;
- ❹ Timeliness;
- ❺ Action-oriented.

There can be different types of reports as follows:

#### **Visit reports**

If the visiting body intends to issue individual visit reports, these would ordinarily present the principal findings of the monitoring team, as well as any issues arising from the final talk with the director. Such reports are generally complemented by other forms of reporting, and can therefore be relatively brief. Most importantly, they ought to be issued as soon as possible after the visit, and include recommendations and reinforce the benefits of constructive engagement and dialogue.

#### **Periodic reports**

Periodic reports may record and outline:

- visits to one specific place over a period of time, or
- visits to several places over a period of time.

They provide statistical data, and give an overview of the situation and a general analysis of compliance with human rights standards.

They may provide a record of recommendations made and/or implemented during the period. The period covered will depend on the visiting body's mandate, the circumstances, and the practices of the visiting body. They may be monthly, quarterly, biannual, or annual.<sup>53</sup>

### **Thematic reports**

A thematic report would provide an analysis of a particular issue (such as access to medical care), or selection of issues (such as access to medical care and persons with particular vulnerabilities), rather than purporting to reflect the overall outcomes of a monitoring visit or series of visits.

### **Emergency or incident reports**

Sometimes it may be appropriate to prepare emergency or incident reports, where urgent action is required on specific issues such as riots or hunger strikes.

#### **3.5.4 Making Recommendations**

Just as monitoring visits are not ends in themselves, nor are recommendations. Formulating meaningful recommendations can be one of the most difficult parts of a monitoring visit. Recommendations ought to be clear, specific, and actionable. The clearer and more specific the recommendation, the more likely it is to be followed. Comprehensive and systematic documentation and analysis of conditions will make clarity and specificity in the formulation of recommendations more achievable.

Recommendations need to be pitched at the right level of authority: that is, at those officials that have the authority to make the changes and adjustments necessary to give effect to them. Where the root causes of a problem lie elsewhere, recommendations might take a multi-level approach that addresses a problem both operationally and systemically.

In terms of both content and tone, recommendations need to be designed with their target audience in mind. They should be practical and facilitative rather than judgmental or sanctimonious. They are there to effect change for the people whose lives are directly impacted by the experience of detention.

Without compromising minimum standards, and bearing in mind that the place of detention is likely to remain in operation,<sup>54</sup> recommendations need to be mindful of the following:

- The sensitivity and complexity of particular issues within the detention environment, and the need for flexibility in addressing them;
- The main problems in the detention facility, and therefore immediate priorities;
- The need to integrate a clear and achievable timeframe for implementation of recommendations (immediate, short-, medium-, and long-term);
- The need for creative solutions for the resolution of particular problems;
- The role recommendations can play in contributing to the development and maintenance of standards;
- The possibility that training and/or technical assistance will be required for effective implementation; and
- The possibility of reinforcing recommendations made by other bodies (for example regional and international visiting bodies) where appropriate – this can strengthen recommendations and make implementation more likely.

The quality and usefulness of the recommendations developed following visits to places of detention can be assessed against the 10 interrelated and mutually reinforcing criteria of the double SMART model.<sup>55</sup>



### BOX 3.19 THE DOUBLE S.M.A.R.T. MODEL

**S**pecific: Each recommendation addresses only one specific issue.

**M**easurable: Evaluating the implementation of each recommendation should be as easy as possible.

**A**chievable: Each recommendation should be realistic and feasible.

**R**esults-oriented: The actions suggested should lead to concrete results.

**T**ime-bound: Each recommendation should mention a realistic timeframe for implementation.

+

**S**olution-suggestive: Wherever possible, recommendations should propose credible solutions.

**M**indful of prioritization, sequencing and risks: When there are many recommendations, urgent ones should be dealt with first. Less urgent ones may be reserved for subsequent reports.

**A**rgued: Recommendations should be based on high-quality, objective evidence and analysis. They should refer to relevant standards.

**R**eal-cause responsive: Recommendations should address the causes of problems, rather than the symptoms.

**T**argeted: Recommendations should be directed to specific institutions and/or actors rather than to 'the authorities', so that responsibility for implementing them is clear.

### **3.5.5 Dissemination of Reports**

The foremost audience for reports will be the detaining authorities. However, with due regard to considerations of privacy and confidentiality, it may also be important for reports to be made publicly available. The timing of publication will be a question of strategy to be decided by the visiting body. Reports may also be disseminated to other stakeholders, in particular those who may be in a position to influence, support and/or monitor the implementation of recommendations. These include, for example, UN and regional agencies and mechanisms, local government officials and parliamentarians, NGOs and other civil society actors.

Depending on the monitoring body's communication strategy, the reports, or summaries thereof, can also be made available to the media. In this case it will be important to monitor the reaction and response of the authorities. This will assist in planning follow up.

### **3.5.6 Follow up to Reports and Recommendations**

It is desirable that the authorities enter into a constructive dialogue with the visiting body on the findings in the report and implementation of recommendations. There are a variety of ways in which follow up may be undertaken; some are systemic in character, others are individualized or case-based interventions.

Below are some suggestions of strategies that can be used:

#### **Seek written response to reports**

It is desirable that the authorities respond to a report and recommendations in writing, indicating any differences of opinion on the facts or compliance with legal standards. In the context of some monitoring mandates, the authorities are obliged to respond. It is important to set a deadline for response which allows reasonable time. What constitutes 'reasonable' will depend on the circumstances, in particular on the seriousness of the issues raised and the urgency with which they need to be addressed.

The response ought to provide an indication of the authorities' readiness to implement the recommendations. The nature and content of this response may provide guidance to the visiting body in terms of follow up dialogue, adaptations that may be necessary for future visits, or the immediate and pressing necessity for a follow up visit, whether unannounced or at short notice. Where assurances are given that a recommendation has been implemented, this is to be welcomed. It also needs to be flagged for follow up during the next monitoring visit, or through a coordinated monitoring network.

Any correspondence with the authorities by the visiting body need to comply with local conventions and protocols for written communications; using formal language and salutations, as appropriate.

### **Follow up visits**

It is of critical importance to conduct follow up visits to check on the implementation of recommendations and to confirm the extent to which the reality on the ground reflects the assurances given at a higher level of authority.

### **Organizing meetings and roundtables with key authorities**

Follow up meetings and roundtables with key authorities need to be carefully and thoughtfully planned.

Planning, needs to anticipate obstacles to implementation of recommendations and the reason for them. This process needs to weigh up prospects for implementation that take into account social, economic, legal and political considerations and whether implementation is, or is perceived to be, in the interests of the authorities. This will assist in developing strategies that maximize the chances of implementation.

Findings and recommendations can be presented and discussed with clarity, impartiality, and professionalism. Subject to protection considerations embodied in the maxim 'do no harm', the dialogue ought

to be evidence-based. If necessary, the nature of the authorization to conduct monitoring visits can be reiterated (and should be accessible to refer to if required).

### **3.5.7 Evaluating and Reviewing the Monitoring Process**

If the process of monitoring places of immigration detention is to be effective, its work and impact must be regularly evaluated and reviewed, with a view to learning from the process and making any necessary changes. This Manual is intended to assist users to develop clear monitoring goals, objectives and tasks with a view to obtaining clear and measurable outcomes.

The evaluation of a monitoring visit, or a monitoring programme, needs to review all aspects and stages of the process. It should assess the methodology and its implementation at the different stages. In broad terms, it ought to be able to answer:

Monitoring processes that are well planned and prepared ought to enable visiting bodies to provide considered and concrete answers to all these questions. Those evaluating must, however, remain mindful of the fact that changes in the protection landscape tend to be incremental and undramatic. As such, the evaluation and review process needs to be periodic and ongoing, and to measure impact over time.

### **3.5.8 Possible Additional Follow up Strategies**

In addition to the monitoring process, bodies could consider developing additional follow up strategies, such as those suggested below.

#### **Review of legislation and/or administrative instructions or rules**

In some countries, follow-up involvement of visiting bodies may extend to taking part in revising national legislation and/or administrative instructions or rules, such as immigration or asylum laws. UNHCR and some NHRIs (including human rights commissions and Ombudsmen

### **BOX 3.20 EVALUATION OF A MONITORING VISIT**

- What have we done?
- What have we achieved?
- How well have we done it?
- What difference have we made?
- How do we know?

**In turn, this ought to provide answers to the following questions:**

- What do we know now that we did not know before?
- Are there any gaps or deficiencies in our monitoring process?
- Were there any missed opportunities?
- What could we do better?
- How would it make a difference?

Offices), for example, engage with government at this level. Under the OPCAT, the power of NPMs to ‘submit proposals and observations concerning existing or draft legislation’ is described as a ‘minimum power.’<sup>56</sup>

### **Individual interventions and referrals**

In cases where there is an imminent risk of deportation or removal that may result in refoulement or other violations of international law, individual interventions by the visiting body may be necessary. Likewise, imminent risk of torture or other ill-treatment may trigger the need for an individual intervention. Although such issues arise as part of the broader monitoring and reporting function of the visiting body, such risks are highly likely to trigger the need for interventions beyond the more ‘traditional’ monitoring and reporting function.

Whatever their capacity to make individual interventions, all visiting bodies need to develop an effective policy and system for making referrals.

## Advocacy

Depending on the scope of the visiting body's authorization to visit places of detention for the purposes of monitoring, it may be both necessary and appropriate to develop advocacy strategies in parallel to the monitoring function. Advocacy strategies need to be designed to complement the monitoring function; that is, to give voice to the visiting body's findings with a view to achieving the necessary protections and the implementation of the recommendations.

Advocacy may take place through the strategic use of public action initiatives, civil society forums and networks (e.g. the IDC), UN and/or regional forums (e.g. the Working Group on Arbitrary Detention, the UN Human Rights Council, and other human rights mechanisms).

## The media

Authorities are usually highly sensitive to media coverage. It is advised that visiting bodies use the media cautiously and strategically and speak only within their area of competence and responsibility. Facts must be clear and accurate, and distinctions need to be made between reports and allegations on the one hand, and findings on the other. Commentary ought to be carefully analysed, focused, balanced and defensible. It is recommended that visiting bodies develop guidelines regarding contact with the media.

## UN human rights bodies and mechanisms

In some cases it may be appropriate to engage international human rights bodies and mechanisms.<sup>57</sup> For example, in a country which has recognized the competence of a UN human rights treaty body to receive and consider individual communications,<sup>58</sup> an individual complaints procedure may be initiated. This is a complex process which requires the exhaustion of all available domestic remedies, and issues can take many years to resolve. However, there is a growing body of international and regional jurisprudence that relates to immigration

detention.<sup>59</sup> In the context of immigration detention, interim measures have been particularly important in situations where deportation or removal is imminent and *refoulement* may be the consequence. In addition to individual communication procedures, visiting bodies may consider it appropriate to share their findings through the Universal Periodic Review process conducted by the UN Human Rights Council or through the periodic reporting procedure to the UN treaty bodies, which monitor the implementation of human rights treaties by States Parties. Visiting bodies may also elect to share information with the UN special procedures, such as the thematically mandated SRs on Torture and on HRM, or special procedures with country-specific mandates.

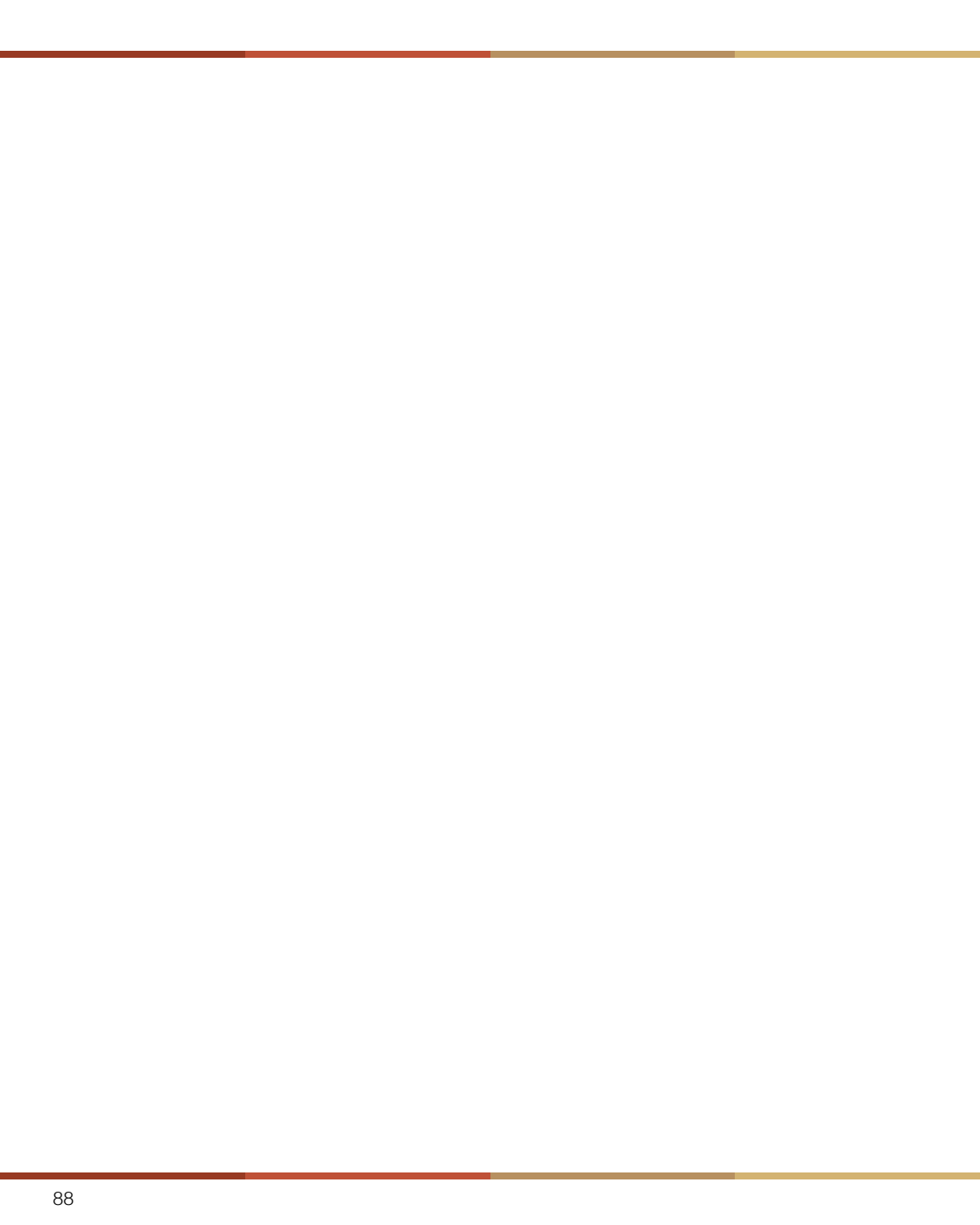
## Litigation

Some domestic visiting bodies, in particular national human rights institutions, have quasi-judicial and sometimes even judicial powers. They may be able to receive and investigate complaints, order or recommend the release of detainees whose detention is arbitrary or unlawful and/or order or recommend the payment of compensation. In other cases, the visiting body may be in possession of information that provides grounds to commence a legal proceeding, or that might be critical to its success. In these situations, referral and collaboration with lawyers would be an appropriate step to take, especially if the visiting body encounters resistance to implementation of its recommendations.

Interventions before courts by organizations and entities such as UNHCR and NHRIs are an important tool through which protection standards can be developed and a consistent application of international refugee and human rights law fostered.

## Capacity building and training

Monitoring bodies may also consider promoting and contributing to training of staff involved in immigration detention in order to increase knowledge and skills and positively affect attitudes and behaviour.





# 4 WHAT ASPECTS OF IMMIGRATION DETENTION TO EXAMINE

Section 4 can be read as a stand-alone section. Drawing on the main international and regional standards relating to immigration detention, the section proposes benchmarks, practical considerations and general guidance on specific aspects of immigration detention that can be examined as part of a monitoring visit. It enables easy reference to the relevant international standards set against the issues that typically arise in the immigration detention context.

The sources refer to universal and regional human rights and refugee law<sup>60</sup> treaties and soft law instruments. The list is non-exhaustive but the most relevant and specific provisions have been selected. The general human rights standards such as non-discrimination, the prohibition on arbitrary detention, and the humane and dignified treatment of persons in detention apply throughout but are not separately listed.

## 4.1 DETENTION AND IMMIGRATION PROCEDURES

The aim of this section is to examine the way in which people are received into the immigration detention environment and how they are provided with information and access to the procedures necessary to respond to the circumstances which gave rise to their detention. These are the critical first steps in a person's experience of becoming an immigration detainee, and will dramatically affect the way in which s/he experiences immigration detention, whether in the short or long term.

#### **4.1.1 Detention Procedures and Access to Alternatives to Detention**

An examination of the legal basis for detention is critical to understanding the nature and effects of conditions of detention. This does not mean that visiting bodies need to undertake a full analysis of the legal framework of detention in order to monitor places of immigration detention; in fact, in many jurisdictions, there is already a voluminous body of work on these issues. Rather, an understanding of the legal basis for detention – or lack of it – is an essential starting point for effective monitoring.

International law provides that restrictions on liberty and the exceptional use of detention are only permissible when they are both legal and non-arbitrary. In other words, any restrictions on liberty, including detention, may only take place on grounds prescribed by law and in accordance with procedures authorized by law.

The prohibition on arbitrary detention requires a number of additional safeguards to ensure fairness and non-discrimination. First, the detention must be in pursuit of a legitimate purpose. ‘Legitimate purposes’ in the context of immigration detention are the same for asylum-seekers and migrants as they are for anyone else: when someone presents a risk of absconding from future legal proceedings or administrative processes or when someone presents a danger to their own or public security.

Second, assuming that the State has a legitimate purpose, any detention must be necessary, reasonable and proportionate in all the circumstances of the case. These requirements apply to all persons subject to detention, regardless of refugee, asylum-seeker or other immigration status.

Finally, the detention must be subject to meaningful, enforceable and independent periodic review.

A monitoring team will not always be in a position to assess whether detention in any given instance is arbitrary or unlawful. Nevertheless, where there is a record of arbitrary or unlawful detention practices, this may indicate a systemic or increased risk of arbitrary and unlawful detention of other immigration detainees.

For a more detailed review of the relevant standards, see Section 2.6 on the International Legal Framework.

### ① Immigration detention is exceptional and permissible only on grounds prescribed by law and in accordance with procedures authorized by law

**Sources:** [ICCPR](#) 9(1), 12(1); [CMW](#) 16(1), 16(4), 39; [CRC](#) 37(b); [CRPD](#) 14(1); [CSR](#), Art. 31(1); [BPP](#) 2; [UNHCR-DG](#) 3; [ACHRP](#) 6, 12; [ACHR](#) 7(1), (2), (3); [ECHR](#) 5; [CFREU](#) 6; [EU-RD](#) Recital (15); [PBPPDLA](#) III(1), (2); [CPT/Inf](#) (2009) 27 §85

#### Tips for monitors:

- Is there a legal basis (in national law) for the detention of the individuals detained?
- Is the use of detention an exceptional practice and a measure of last resort? Check immigration detention statistics: what percentage of people who may be detained are actually detained/released?
- Are detainees provided with individual detention orders at the time of arrest and detention or as soon as possible thereafter?
- Do immigration detainees receive individualized written reasons for the initial decision to detain them in a language they understand?

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**② Decisions to detain are subject to periodic review, and detainees have a meaningful right to challenge or appeal the decision to detain**

**Sources:** [ICCPR](#) 9(5); [CRC-GC](#) 6(61-63), GC 10(83); [CMW](#) 16(6), (8), (9); [BPP](#) 11(3), 37; [UNHCR-DG](#) 3(17); [ACHR](#) 7(5)-(6), 25(1); [ACHRP](#) 7; [ECHR](#) 5; [CFREU](#) 6; [EU-RD](#) Recital (15); [PBPPDLA](#) V; [CPT/Inf](#) (2009) 27 §86.

**Tips for monitors:**

- Are detainees promptly informed of their right to challenge the lawfulness of their detention? Are effective remedies available?
- How often is detention in an individual case reviewed (regularity, frequency, and quality, by whom, with what powers)?
- What is the review procedure? Are detainees informed about it in a language they understand?
- Is the reviewing body independent? Is the decision enforceable?
- Is the review automatic or does it need to be requested? Is it individualized?
- Do detainees have ready access to information about the progress of their application?
- Are unaccompanied or separated children given assistance with any review procedures?

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**③ Detention is subject to strict time limits, and detainees are released if a prescribed maximum period of detention is reached**

**Sources:** [UNHCR-DG](#) 6; [WGAD-D5](#) P7; [PBPPDLA](#) III (1); [EU-RD](#) Recital (16); [CPT/Inf](#) (97) 10 §27

**Tips for monitors:**

- Is there a maximum time limit set for detention in law and in the individual case? What happens if a detainee reaches the limit?
- Are unaccompanied or separated migrant children detained? If so, for how long?
- What is the actual duration of detention (average, longest)?

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#### ④ Alternatives to detention are first pursued prior to any decision to detain

**Sources:** [UNHCR-DG](#) 4.3; [PBPPDLA](#) III(4); [EU-RD](#) Recital (15)

**Tips for monitors:**

- What types of alternatives to detention are available? Are they meaningfully available? On what basis?
- Does the detention order contain the justification why no other alternative measure was used?
- How many people have been released into alternatives to detention over a given period? How many have remained in detention over the same period?
- Are any liberty deprivations associated with alternatives to detention consistent with the principles of legality and non-arbitrariness?
- Are there complaint/periodic review mechanisms of alternatives to detention, to ensure that they do not, themselves, amount to arbitrary deprivations of liberty or otherwise violate refugee, asylum-seeker or migrant rights?
- On what basis are persons in situation of vulnerability accorded access to alternatives to detention?

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#### ⑤ Detainees and members of their families released into the community as an alternative to detention are issued with the necessary identity and/or release/stay documents to safeguard against re-detention for reasons of lack of documentation, and are able to access services

**Sources:** [UNHCR-DG](#) 4.3

**Tips for monitors:**

- Are official temporary IDs provided to detainees and members of their families?
- Are those released issued with temporary IDs that permit residence in the country?
- Are these respected by the authorities?

### 4.1.2 Access to a Lawyer

Immigration detainees are entitled to have access to a suitably qualified lawyer to advise and assist them in relation both to the detention itself as well as to relevant protection and/or immigration procedures. As such, detainees ought automatically to be informed of their right to legal advice and assistance and provided with prompt access thereto. In addition to providing legal advice, lawyers can be crucial agents for prevention of torture and also of *refoulement*. Where free legal assistance is or may be available to detainees, the availability of such assistance ought to be effectively communicated to them as a matter of course.

Detainees must be given adequate time and facilities for legal consultation and communication. Such communications and consultations must take place without delay or censorship and in full confidentiality.

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#### ① Detainees have access to a suitably qualified lawyer

**Sources:** [ICCPR](#) 14(3)(b), (d); [CMW](#) 18(3)(b), (d); [CRC](#) 37(d); [CRC](#) GC 6; [CSR](#) 16(2); [UNHCR-DG](#) 7; [BPP](#) 11(1) 17, 18; [SMR](#) 93; [WGAD-D5](#) p.2; [ACHR](#) 8(2)(d), (e); [PBPPDLA](#) V; [ACHRP](#) 7; [ECHR](#) 6; [EPR](#) 23.1 & 98; [CFREU](#) 47; [EU-RD](#) 9.7; [CPT/Inf](#) (97) 10 §30, 31; [CPT/Inf](#) (2009) 27 §82, 87

#### Tips for monitors:

- Do immigration detainees have access to a lawyer from the outset of their detention?
- Do unaccompanied or separated children have access to a lawyer?
- How frequently do lawyers visit?
- Do rooms and other sites used for legal consultations provide privacy and confidentiality?
- Is there a duty lawyer system or other mechanism for ensuring timely access to legal advice?
- Do detainees have any concerns about access to or quality of legal assistance?

## ② Immigration detainees are automatically informed of their right to access legal assistance at every stage of the proceedings

**Sources:** [ICCPR](#) 14(3)(b), (d); [CMW](#) 18(3)(d); [CRC](#) 37(d); [CSR](#) 16(2); [UNHCR-DG](#) 7; [BPP](#) 11(1) 17, 18; [SMR](#) 93; [WGAD-D5](#) p.2; [ACHR](#) 8(2)(d), (e); [ECHR](#) 6; [PBPPDLA](#) V; [ACHRP](#) 7

### Tips for monitors:

- Is free legal advice and assistance made available to immigration detainees? If not free, is there a system to ensure representation on a pro bono basis?
- When and how are detainees informed of their right to a lawyer? Is it in an accessible language?
- How many/what percentage of detainees benefited from free legal advice over the past 3–6 months?
- Have any detainees been denied or declared ineligible to receive legal aid?

## ③ Immigration detainees have easy, unimpeded access to their legal advisers

**Sources:** [BPP](#) 11(1), 17, 18; [SMR](#) 93, 94; [RPJDL](#) 18(a); [PBPPDLA](#) V; [EPR](#) 23.3; [EU-RD](#) 9.7; [CPT/Inf](#) (97) 10 §31; [CPT/Inf](#) (2009) 27 §82

### Tips for monitors:

- Is there unrestricted and free of charge access to telephone, fax and/or email for communications with legal advisers? Are these conversations private?
- Are free, qualified and impartial interpreters available if necessary?
- Have there been any instances of delays in accessing a lawyer?

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**④ Lawyers can be present during any interview with government officials or their agents**

**Sources:** [SMR](#) 93; [BPP](#) 11; [CPT/Inf](#) (97) 10 §31

**Tips for monitors:**

- Can lawyers be present during interviews with officials or formal procedures?
- What is the procedure for requesting a lawyer? Are there any delays, and if so with what consequences?

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**⑤ Immigration detainees and their lawyers receive prior written notice of all interviews, review, appeal hearings and decisions relating to detention, protection, immigration and removal processes and procedures**

**Sources:** [CMW](#) 16(5), 18(3); [BPP](#) 11(2), 13; [PBPPDLA](#) V

**Tips for monitors:**

- What is the content of the written information provided to detainees and their lawyers?
- Is it in a language that the detainee understands?

### **4.1.3 Arrival and Reception**

Arrest and detention are a cause of great anxiety and insecurity for asylum-seekers and migrants, and can aggravate their vulnerability. It is essential that detainees are treated with respect and are made aware of the full range of their rights. Detainees are to be provided with the means to contact family, lawyers, UNHCR and consular staff,<sup>61</sup> as appropriate, from the outset of deprivation of liberty. If detainees are treated in a way that minimizes their sense of vulnerability by making them feel respected and as safe as possible, they are more likely to cope with the experience of detention, as well as to cooperate with the staff and management. The way in which detainees experience these initial stages will also dramatically affect how they experience immigration detention overall, whether in the short or longer term. The



initial phase of arrival and reception is also an important opportunity to ensure that detainees are properly recorded in a register and that detainees with special needs are identified.

Last but not least, it is important for all detainees to be able to undergo a medical check on arrival, carried out by health staff, in private and with interpreters if need be.

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**① Detainees are systematically informed on arrival in writing and in a manner / language they understand of the reasons for arrest and detention**

**Sources:** [ICCPR](#) 9(2), 14(3)(a); [CMW](#) 16(5); [BPP](#) 10, 14; [ACHR](#) 7(4), 8(2)(b); [ECHR](#) 5; [EPR](#) 38; [PBPPDLA](#) V

**Tips for monitors:**

- How are detainees informed of the reasons for detention? Is this registered and how?
- Is information on the detention procedures provided to detainees?
- Is information on their rights and obligations in relation to detention and the detention facility provided?
- How is the information given?
- Is the information given in a language and manner understood by the detainee? (including people who are illiterate)

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**② All immigration detainees are automatically advised of their right to seek asylum and to protection against refoulement**

**Sources:** [UDHR](#) 14; [UNHCR-DG](#) 1; [ACHR](#) 22(7); [ACHRP](#) 12(3); [CFREU](#) 18; [CSR](#) 33; [CRC](#) 22; [ASP](#) 19; [ATP](#) 14; [UNHCR-DG](#) 1

**Tips for monitors:**

- What information is given to detainees? In what form?
- Is the information given in a language and manner understood by the detainee? (including people who are illiterate)

---

**③ There is a detention register which records identity, time, date and grounds of detention, the competent authority responsible for the detention, and which detainees sign**

**Sources:** [ICPPED](#) 17(3); [SMR](#) 7(1); [WGAD-D5](#) P4; [PBPPDLA](#) IX(2); [CPT/Inf](#) (2009) 27 §85; [EPR](#) 15.1

**Tips for monitors:**

- Are the register(s) systematically and rigorously kept? Are there any gaps in the entries?
- What information is recorded in the detention register? Does it include the following: basic personal biodata; a valid order for detention; details of documents and other means of establishing identity; name and contact details of immediate family members; language spoken and whether free, qualified and impartial interpreter available and used; stated reason for being in or coming to the territory; whether the detainee has applied for international protection/asylum; whether the detainee has special needs?

---

**④ Body searches are resorted to only when strictly necessary to ensure the security of staff and the immigration detainees, and are conducted in a manner that respects the dignity of the person. Fully trained staff of the same gender as the immigration detainee detainee only conduct strip searches in exceptional circumstances.**

**Sources:** [ICCPR](#) 7, 10; [BR](#) 19, 21; [CPT/Inf](#) (99) 12; [EPR](#) 54; [PBPPDLA](#) XXI

**Tips for monitors:**

- What are the procedures for body searches, upon admission and subsequently?
- Are searches conducted by staff of the same gender?
- Do staff involved in body search receive specific training?
- How are searches on women performed, and by whom?
- Are there special procedures regulating searches of LGBTI detainees?
- Are suitable alternative screening methods, such as scanning, used?

## 5 Immigration detainees are separated from others (e.g. criminal detainees)

**Sources:** [ICCPR](#) 10(2)(a); [CMW](#) 17(2); [BPP](#) 8; [SMR](#) 8(b); [RPJDL](#) 17; [WGAD-D5](#) P9; [UNHCR-DG](#) 8; [EXCOM](#) 44(f); [ACHR](#) 5(4); [PBPPDLA](#) XIX; [CPT/Inf](#) (97) 10 §28

### Tips for monitors:

- What is the process for ensuring that immigration detainees are not mixed with the general criminal population?
- If detained in a criminal detention facility, where are immigration detainees held, e.g. in a dedicated aisle or section of the facility?
- What is the procedure to protect detainees from self-harm or to identify those who might be at risk from others? Is there a first night assessment?

## 6 All detainees are screened on arrival by qualified health professionals, in private and using interpreters, as appropriate

**Sources:** [SMR](#) 24; [UNHCR-DG](#) 8 §48(vi); [PBPPDLA](#) IX(3); [CPT/Inf](#) (97) 10 §30, 31; [CPT/Inf](#) (2009) 27 §82

### Tips for monitors:

- Are detainees systematically screened by a qualified health professional, on arrival?
- Are free, qualified and impartial interpreters present?
- Are physical and medical vulnerabilities adequately identified, assessed and addressed?

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**7 All detainees are instructed on rights, routines, services, rules and procedures**

**Sources:** [BPP](#) 13, 14; [SMR](#) 35; [WGAD-D5](#) P4 and 8; [RPJDL](#) 6, 24, 25; [PBPPDLA](#) IX(1); [CPT/Inf](#) (97) 10 §30 [CPT/Inf](#) (2009) 27 §84

**Tips for monitors:**

- How is the information on rights and procedures provided (poster, booklets and other outreach materials)?
- Are detainees systematically provided with a document explaining procedures applicable to them and setting out their rights in clear and simple terms?
- Are free, qualified and impartial interpreters readily available?
- In which languages are facility-specific regulations available? Are they accessible to people who are illiterate?

---

**8 Detainees can telephone family and legal counsel in private**

**Sources:** [BPP](#) 16(1), 19; [SMR](#) 37; [WGAD-D5](#) P2; [RPJDL](#) 61; [PBPPDLA](#) XVIII; [CPT/Inf](#) (97) 10 §31

**Tips for monitors:**

- Are detainees informed of their rights and permitted to contact family and legal counsel? How?
- Are telephones available and free of charge? Are international calls permitted? How often?
- Does the register record whether a contact was established and the time and date? Are conversations private?

**9 Detainees are able to contact UNHCR and/or a consular post or diplomatic mission in private and free of charge, and this contact is duly recorded**

**Sources:** [CMW](#) 16(7); [ASP](#) 16(5); [BPP](#) 16(2); [SMR](#) 38; [RPJDL](#) 56; [EU-RD](#) 18.2 (b); [UNHCR-DG](#) 8 (vii); [WGAD-D5](#) p.2; [OHCHR-TG](#) 6(3); [PBPPDLA](#) V; [CPT/Inf](#) (97) 10 §31; [CPT/Inf](#) (2009) 27 §83, 87

**Tips for monitors:**

- Are detainees informed of their rights and permitted to contact UNHCR and/or a consular post or diplomatic mission? How?
- Are telephones available? Are they free of charge? How often can detainees make calls?
- Does the register record a contact with UNHCR and/or a consular post or diplomatic mission including the time and date?
- Are there measures in place to protect refugees and asylum-seekers from contact or visits by the authorities of their country of origin or habitual residence?
- Are all detention officials aware of the special protection framework for asylum-seekers and refugees in this regard?

**10 Legal counsel, UNHCR and/or other appropriately mandated organisations are promptly notified of detention**

**Sources:** [CRC](#) 22(b); [SMR](#) 38; [WGAD-D5](#) p.10

**Tips for monitors:**

- Do detaining authorities have an updated list of relevant professionals they can contact?
- Are UNHCR and other relevant actors routinely notified of new arrivals?
- Is information related to access to legal counsel and/or to UNHCR or other appropriately mandated organisation readily available to the detainee?

#### 4.1.4 Transfer(s)

Detainees may be transferred from one place of detention to another or removed/released from the facility. Whatever the reasons for transfer, this must be done respectfully and in accordance with the relevant procedures. This includes informing detainees in advance when the transfer will take place and where they are being transferred to, and giving them enough time to inform their family and legal advisers.

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**① Adequate notice is given to detainees of planned transfers, and details of the transfer and reasons for it are duly recorded**

**Sources:** [ICPPED](#) 18(1)(d); [SMR](#) 44(1), (3); [RPJDL](#) 21, 22; [BPP](#) 16(1); [PBPPDLA](#) IX(4)

**Tips for monitors:**

- How are detainees informed about planned transfers? Is the information they are given accurate?
- Are the date, time and purpose of transfer recorded?
- How much notice is given to the detainee?
- Can detainees challenge the decision to transfer?
- How can detainees inform their legal representative in advance of the transfer?
- Do detainees have the opportunity to contact family, pack their belongings and prepare themselves for the transfer?
- Check if there have been any last minute transfers of detainees before announced visits (by monitors, inspectors, lawyers, others).

- ② **Transfers are carried out safely and with dignity, in appropriate conditions and taking into consideration the situation of people with special needs, such as children, pregnant women, older people and people with disabilities**

**Sources:** [PBPPDLA IX\(4\)](#); [EPR 32](#)

**Tips for monitors:**

- How is the transfer conducted (vehicles, buses)?
- Who is in charge of the transfer? Are there specialized staff escorts?
- Are restraint methods used (handcuffs or other)?
- Is the transportation used safe, clean and comfortable? Is a doctor or qualified health professional present? What happens in case of a medical emergency?
- Are vehicles equipped so that detainees are not exposed to public view while being transferred?
- What is the frequency and adequacy of stops made in the course of transit/transfer (toilet, meals, rest, overnight stay, prayer times, play for children)?
- Are male and female detainees and children transported separately (unless related)?
- Are there protections against sexual assault during transfer?
- Are appropriate arrangements made for people with special needs (e.g. children, pregnant women, elderly, disabled)?
- Have transfers affected access to procedures, counsel, UNHCR, family or social networks?
- Do monitors have access to transferees?

### 4.1.5 Access to Asylum/Protection Procedures

Lack of access to fair and efficient asylum/protection procedures heightens the risk of prolonged and unnecessary detention, and of *refoulement*. Access to such procedures also has a direct bearing on how detainees experience immigration detention, particularly because of the effect it has on their sense of safety and security.

In each place of detention, uniform protocols that ensure that people are advised of their rights and are able to avail themselves of asylum/protection and immigration procedures need to be in place, should they wish to do so.

This is to be read in conjunction with the right to access to a lawyer (see 4.1.2. above).

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**① Immigration detainees are informed of their right to seek asylum and to access other forms of protection and they have effective access to these procedures as appropriate.**

**Sources:** [UDHR](#) 14; [UNHCR-DG](#) 1; [ACHR](#) 22(7); [ACHRP](#) 12(3); [CFREU](#) 18; [CRC](#) 22; [ASP](#) 19; [ATP](#) 14

**Tips for monitors:**

- Are detainees informed of their right to apply for asylum or for other forms of protection, such as statelessness determination procedures, complementary or subsidiary forms of protection?
- How is this information made available to the detainees?
- Are there mechanisms in place for the identification of persons in need of protection?
- Are asylum/protection procedures available and accessible to immigration detainees?



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## ② Information on other immigration procedures is available

**Sources:** [ATP](#) 6(2)(a); [BPP](#) 13

**Tips for monitors:**

- Are detainees given information on all available options (such as voluntary returns, temporary residence permit or readmission procedures)?
- Do immigration detainees who are trafficked persons have access to applicable procedures (e.g. asylum, witness protection, reflection period visas, other)? How?
- What procedures are in place to identify trafficked persons?

---

## ③ Immigration detainees have adequate and effective access to information

**Sources:** [BPP](#) 10, 11(2), 13; [ATP](#) 6(2)(a), 6(3)(b); [PBPPDLA](#) V, IX(1); [CPT/Inf](#) (2009) 27 §93

**Tips for monitors:**

- Do immigration detainees experience delays in receiving notice, lodging appeal papers, attending hearings arising from being in detention?
- Do the staff of the place of detention facilitate detainees' attendance at interviews, review and appeal hearings? Are detainees provided with application forms appropriate to their expressed needs and sufficient time to complete them? Is confidentiality guaranteed?
- Are time limits for applying for asylum/protection tailored (extended) to allow for the fact that persons are in detention?

### 4.1.6 Requests and Complaints

In all places of detention there needs to be internal requests and complaints procedures that are easily accessible, as well as external procedures for making confidential requests and complaints without censorship. Detainees ought to be informed of these procedures and understand how to access them. Hence, an effective complaints procedure would provide detainees with a means to discuss or contest any aspect of their conditions in immigration detention. It needs to be procedurally clear and fair, respect privacy and confidentiality, and produce tangible outcomes for detainees.

---

**① Detainees can raise any aspect of their stay in immigration detention through an internal confidential complaints procedure.**

**Sources:** [SMR](#) 35, 36(1); [RPJDL](#) 72-78; [PBPPDLA](#) VII; [EPR](#) 70.1

**Tips for monitors:**

- Is an internal complaints procedure in place and accessible?
- Is privacy and confidentiality respected? How?
- How many complaints have been lodged over the past 3/6/12 months?
- How does this number compare with the average number of persons held in the detention centre?
- What measures are in place to address these complaints?

---

## ② Detainees have access to an external confidential complaints procedure

**Sources:** [BPP](#) 33; [SMR](#) 36; [RPJDL](#) 75-76; [BPBPDLA](#) VII

### **Tips for monitors:**

- Is an external complaints procedure in place and accessible?
- Is privacy and confidentiality respected? How?
- Are illiterate detainees or those speaking foreign languages able to file complaints in practice?

---

## ③ Every request or complaint is impartially investigated, and promptly dealt with and replied to without undue delay

**Sources:** [BPP](#) 7, 33(4); [SMR](#) 36(4); [BPBPDLA](#) VII

### **Tips for monitors:**

- Do requests and complaints procedures comply with standards of fairness and justice? Are they transparent? Are they impartial?
- Do complaints receive a timely response that addresses the substance of the complaint?
- What is the most common outcome?
- What percentage of complaints have been decided in favour of the complainant?

---

## ④ Detainees do not suffer from intimidation, sanctions and reprisals for making a request or complaint

**Sources:** [BPP](#) 33(4); [EPR](#) 70.4

### **Tips for monitors:**

- Have detainees been intimidated and discouraged from filing complaints?
- Have there been any reports or allegations of intimidation, sanctions, retaliation or reprisals?

#### **4.1.7 Release and After-Care**

In the prison system, the date on which a person is to be released is generally known and can be planned for by the detainee and his/her support network. In the context of immigration detention, the endpoint of detention is far less clear-cut. Detainees rarely know in advance when they will be released, if they will be released into the host community, or whether they will be required to return to their country of origin or former habitual residence, or indeed to return or travel to a third country. As time goes on, immigration detainees often do not know whether they are getting closer to the future they seek or fear. This uncertainty can be an agonizing combination of hope and fear. As such, stress and anxiety levels may increase rather than decrease as immigration detention approaches its endpoint. In this regard, it is important to remember that detainees being released may believe that what in fact is happening is their removal. It is therefore imperative that release, removal and deportation procedures are all managed respectfully, sensitively and humanely. Whatever the final outcome, the immigration detainee needs to be in a position to integrate into the host society or reintegrate into his/her country of origin or former habitual residence.

---

## ① Detainees are adequately prepared for their release and for life in the host community

**Sources:** [SMR](#) 60(2), 61, 64

[RPJDL](#) 53, 79, 80

### **Tips for monitors:**

- How are detainees informed of their release? Are they given adequate notice?
- Are released detainees provided with adequate medicine if undergoing treatment, as well as their medical records if needed and a list of relevant social/medical services? Are referrals made to these services where deemed appropriate?
- Is a discharge plan prepared for cases involving release into medical/psychiatric institutions?
- Are social/medical services in the host country equipped to take care of released asylum-seekers and migrants?
- Are released detainees linked to legal advisers and/or local support groups?
- Are persons being released issued with appropriate documentation, to prevent re-detention?

---

## ② There is a standard and recorded release procedure

**Sources:** [SMR](#) 7(1)(c), 43; [RPJDL](#) 21(c), (d), 22

### **Tips for monitors:**

- Is the procedure being followed? Are there exceptions? Why?
- How are detainees' belongings (including cash) returned?
- Is there time to check the belongings against the inventory prepared on arrival?
- Are detainees' families notified in advance? How, and how much time in advance? Is safe transportation provided for the detainees and/or family?

#### 4.1.8 Removal, Deportation and Repatriation<sup>63</sup> Procedures

Removal and deportation practices may result in serious violations of human rights and even in some cases death of the deportee, if appropriate safeguards to ensure that the authorities proceed with security and dignity are not met. During deportation procedures, in particular, detainees are very vulnerable and exposed to the risk of ill-treatment and torture.<sup>64</sup> Monitoring removal and deportation practices can serve as an important safeguard against ill-treatment and *refoulement*. It is crucial that the use of force and means of restraints are clearly framed and monitored.

It is also imperative that procedures are managed respectfully, sensitively and humanely and take place in safety and in dignity. Immigration detainees ought to be given adequate notice of deportation or removal and a reasonable opportunity to make preparations. Also, procedural safeguards are needed to ensure that removal orders do not violate the prohibition on *refoulement*.

This section is to be read in conjunction with the right to access a lawyer (see Section 4.1.2), access to asylum/protection and other immigration procedures (see Section 4.1.5) and means of restraint and use of force (see Section 4.2.3).

## ① Immigration detainees are given adequate notice of removal and deportation, including the reasons and destination<sup>65</sup>

**Sources:** [BPP](#) 16; [PBPPDLA](#) V; [CPT/Inf](#) (2003) 35 §41; [CPT/Inf](#) (2009) 27 §95; [CoE-TGFR](#) 4, 15; [EU-RD](#) 8.3 (d)

### Tips for monitors:

- When, where and how are immigration detainees given notice of their removal? Is it given in a manner or format they can understand?
- When are removals/deportations conducted? What are the times of day, dates and circumstances of recent removals/deportations (e.g. night time, weekends, weekdays, public holidays)? Check in particular any controversial removals and reactions of detainees.
- Check safety issues (such as being removed to areas where traffickers lurk at odd hours or dangerous locations).
- Are detainees informed of the reasons for removal/deportation?
- Are detainees given the opportunity to make preparations pre-departure, such as contacting family members, organizations to assist reintegration and internet access to help make on-arrival preparations?

## ② Immigration detainees are given adequate time to inform their lawyer, volunteer visitors and family and friends of when they are to be removed/deported or repatriated from the country

**Sources:** [BPP](#) 16; [PBPPDLA](#) V; [CPT/Inf](#) (2003) 35 §41; [CoE-TGFR](#) 15

### Tips for monitors:

- Do immigration detainees have enough time to contact and inform their support network (lawyer, family, friends, other detainees)? How (telephone, email, fax, etc.)? Are they encouraged to do so?
- Are prior measures taken to help immigration detainees organize their return, particularly on the family, work and psychological fronts?

---

**③ Systems are in place to ensure that immigration detainees are assessed by health staff (before and during the deportation), are fit to travel and that property is returned to them**

**Sources:** [SMR](#) 43; [RPJDL](#) 35; [CoE-TGFR](#) 16; [CPT/Inf](#) (2003) 35 §39

**Tips for monitors:**

- Are immigration detainees seen by a health professional prior to removal/deportation? Is this recorded in a register?
- Are provisions made for timely access to counselling and other support in preparation for deportation or removal?
- Are they assisted by psychologists and social workers who are responsible for preparing immigration detainees for their deportation?
- Are detainees' belongings returned to them before departure? Are they able to take them?
- Is a medical doctor or health care worker present during the deportation process?

---

**④ There are procedural safeguards to ensure that removal and deportation orders do not violate the prohibition on refoulement**

**Sources:** [CSR](#) 33; [CAT](#) 3; [CRC](#) 22; [OAU](#) II(3); [CoE-TGFR](#) 2(3); [ACHR](#) 22(8); [CPT/Inf](#) (2003) 35 §30; [CPT/Inf](#) (2009) 27 §93-95; [EU-RD](#) 8.3(d)

**Tips for monitors:**

- Do detainees have access to all available procedures, including appeal and review procedures?
- Is there a specific register for removal/deportation orders? Does it include a record of what took place in the course of each removal/deportation?
- Have all asylum/protection requests been fully and individually determined/assessed prior to the implementation of removal orders?



### ⑤ Allegations of assault on detainees, including excessive use of force, supported by medical evidence, are thoroughly investigated with a view to prosecution

**Sources:** [CCLEO](#) 8; [PBPPDLA](#) XXIII(3); [CPT/Inf](#) (2003) 35 §32-40; [CoE-TGFR](#) 19

#### **Tips for monitors:**

- Are there any complaints and allegations of excessive use of force? How was this managed?
- What methods of restraints were used? Check authorization, necessity, supervision, medical monitoring, type of force or restraint used.
- What happens for children who are not being removed? Is it possible to make arrangements for reuniting them with other family members who are being removed?

### ⑥ Escort staff are respectful of detainees and have received specific training

**Sources:** [ICCPR](#) 10(1); [BPP](#) 1; [CPT/Inf](#) (2003) 35 §42<sup>69</sup>

#### **Tips for monitors:**

- Have escort staff received specific training? What type?
- Do the staff include women?

## 4.2 TREATMENT AND SAFEGUARDS

In any place of detention detainees are vulnerable vis-à-vis the State and those agents immediately responsible for their detention. As such, there is always a risk that immigration detainees will suffer torture (both mental and physical) or other ill-treatment while in detention. Inhuman or degrading treatment may arise for instance through maltreatment such as the misuse of disciplinary measures and sanctions/reprisals, improper use of methods of restraint or excessive use of force. It may also arise from very poor conditions of detention or the use of solitary confinement.

In addition to these risks of torture or other ill-treatment committed in the place of detention, monitors also need to be aware that asylum-seeker and migrant detainees may have been subjected to various forms of ill-treatment before their departure from their home country and/or before detention, during arrest or transfer. As victims of such abuses, asylum-seeker and migrant detainees require special care and attention from the authorities but also from monitors in the course of their interaction with them.

It is essential to ensure that all areas of immigration detention practice are properly regulated and administered and accompanied by the requisite guarantees and safeguards. Furthermore, there must be effective remedies available to immigration detainees who are victims of torture or other ill-treatment; remedies that include cessation of the violation, compensation, reparations, and measures to prevent recurrence.

#### **4.2.1** Torture and other Ill-treatment<sup>70</sup>

Torture and ill-treatment, past or present, is one of the most difficult issues to handle in any detention environment.

Torture and ill-treatment are absolutely prohibited and can never be justified under any circumstances.

Torture and ill-treatment can take very different forms, including for example sexual abuse or deprivation of food, sleep or communication. It is important to be aware that practices exist which may not make it easy to detect torture or other forms of ill treatment, and which can cause long-term psychological consequences. Victims of torture and/or ill-treatment may suffer from trauma, depression and other emotional or psychological consequences.

In this context, it is important to recognize that immigration detainees may have been victims of torture or ill-treatment at different moments: in their country of origin, during their immigration journey, during arrest

or transfer in the country of destination, as well as inside the place of detention itself. Detention itself may aggravate some of victims' symptoms.

Private interviews are therefore a very delicate moment. For the victim of torture or trauma, talking about what has happened to him/her may be an extremely distressing and humiliating experience, and monitoring teams need to be particularly sensitive to this. This means developing a sense of when to stop or suspend an interview, how deeply to probe, and when to make referrals for specialist intervention. It also means being very clear with the detainee about what the monitoring team can do with the information, and the requirement that the victim gives consent.

Unless the visiting body has judicial or quasi-judicial powers, it ought to refer, subject to the consent of the individual, individual allegations of torture or ill-treatment to the relevant authorities for administrative or criminal investigation.

Finally, it is crucial to keep in mind the principle of *non-refoulement* which bars States from returning any person to a place where they would be at risk of persecution, torture or other forms of serious or irreparable harm. This principle is widely recognized as a rule of customary international law.

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**① No person in immigration detention is subjected to torture or to cruel, inhuman or degrading treatment or punishment, including respecting the principle of *non-refoulement***

**Sources:** [UNCAT](#) 2, 16; [ICCPR](#) 7; [CSR](#) 33; [CMW](#) 10; [SMR](#) 27, 31; [ACHR](#) 5(2); [ACHRP](#) 5; [IACPPT](#) 1, 6; [CPT/Inf](#) (2009) 27 §93-95

**Tips for monitors:**

- Are detainees complaining about their treatment in the place of detention?
- Are there allegations of torture or ill-treatment during arrest or transfer?

---

**② There is a protocol for handling instances where a detainee discloses information about previous mistreatment, torture or cruelty**

**Sources:** [CPT/Inf](#) (2009) 27 §96

**Tips for monitors:**

- Do case histories include comprehensive torture/trauma assessments?
- Do detainees have torture and trauma care plans (numbers, content, implementation)?
- What statistical data is available relating to those identified as having a history of torture and/or trauma?
- Is appropriate support available for children in these circumstances?

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**③ Initial health screening of immigration detainees is attuned and sensitive to the possibility that a detainee may have been a victim of torture or trauma**

**Sources:** [ICCPR](#) 10(1); [BPP](#) 24; [SMR](#) 24; [PBPPDLA](#) IX(3); [CPT/Inf](#) (2009) 27 §96

**Tips for monitors:**

- Do detainees have a medical examination upon arrival? Is a qualified interpreter present?
- Are health professionals trained for dealing with victims of torture and ill treatment?
- Are medical registers available? Are specific cases written down in a separate register?

#### ④ There is a protocol for responding to current allegations of torture or ill-treatment

**Sources:** [BPP](#) 7, 33; [RPJDL](#) 72-78, 87; [CPT/Inf](#) (2009) 27 §96

##### **Tips for monitors:**

- Does the complaints register reveal complaints about torture and other ill-treatment? If so with what responses, non-responses and follow-up action?
- Are allegations of ill-treatment investigated promptly and effectively?
- Is the confidentiality of complaints guaranteed? How?
- Is there any evidence of sanctions/reprisals following complaints?

#### ⑤ Where an allegation of torture or ill-treatment is made, the victim is examined physically and psychologically by an independent medical officer as soon as possible

**Sources:** [BPP](#) 24; [CPT/Inf](#) (2009) 27 §96

##### **Tips for monitors:**

- Is a roster of independent medical officers in place?
- Have medical officers received specific training on documentation of torture or ill-treatment?

### 4.2.2 Isolation and Solitary Confinement

Isolation is a measure by which a person (or a group of persons) is held separately from the other detainees and has limited or no contact with them and with the outside world.<sup>71</sup> Such measures can be used as a disciplinary sanction or as a behavioural management measure (in case of self-harm or risk of suicide). They are also sometimes used for safety purposes such as in separating LGBTI individuals (See 4.8.9). In all cases such separation ought only to occur as a last resort, where strictly necessary to avoid a serious and imminent threat of self-harm, injury to others, or destruction of property, and for the shortest possible time. In some situations, however, isolation is used as a technique for

inhibiting or preventing access by individuals or groups of individuals to legal counsel, relatives and friends, or other sources of external advice or support.

Isolation, especially in the case of prolonged solitary confinement, may constitute cruel, inhuman or degrading treatment or punishment or even amount to prohibited acts of torture.<sup>72</sup> Isolation needs therefore to be closely reviewed and analysed by monitoring teams.

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**① Use of isolation/solitary confinement is regulated, used as last resort and for the shortest period**

**Sources:** [BPTP](#) 7; [SMR](#) 31; [BR](#) 21(b); [RPJDL](#) 67; [PBPPDLA](#) XXII(3); [EPR](#) 60.5

**Tips for monitors:**

- Why is separation or isolation used? (as a punishment; behavioural management; protection; risk of suicide or self-harm?)
- How many detainees have been isolated over a given period? Where is the person isolated?
- Are juveniles isolated?
- Are other persons in situations of vulnerability isolated?
- What is the average length of isolation?
- What are the conditions of the isolation facility and does it comply with humane conditions of detention?
- Do alternatives to isolation exist?

**② The decision to isolate a detainee or group of detainees is exceptional, on clear grounds, and subject to independent review**

**Sources:** [PBPPDLA XXII\(3\)](#); [RPJDL 67](#); [SMR 30\(2\)\(3\)](#)

**Tips for monitors:**

- What is the procedure for isolation? (Who decides? On what basis?)
- Are immigration detainees informed of the reasons for the decision to isolate them in a manner that they understand?
- Is there an isolation register?
- How often are isolated detainees medically examined?
- Is there an appeal procedure?

**③ Isolation of a detainee is subject to effective daily monitoring, including by an independent medical doctor, of his/her physical, emotional and psychological well-being**

**Sources:** [SMR 32](#); SR Torture §100

**Tips for monitors:**

- What is the monitoring procedure in place?
- Is the monitoring team able to access isolated individuals?
- Are isolated detainees seen daily by a medical doctor?
- Can isolated detainees request to see a medical doctor?

**④ Rights and privileges of isolated detainees are respected**

**Sources:** [ICCPR 10 §1](#); [SMR 35](#)

**Tips for monitors:**

- Has isolation or separation compromised any of the detainee's procedural rights?
- What restrictions or limitations are there, if any, on rights enjoyed by other detainees?

### 4.2.3 Means of Restraint and Use of Force

In the context of immigration detention, it is vital that staff and law enforcement officials understand and respect the non-criminal status of immigration detainees and the non-punitive character of their detention.

Physical means of restraint such as handcuffs, or in exceptional circumstances, the use of force, in this context are to be circumscribed by law and applied only when strictly necessary, reasonable and proportionate to the legitimate purpose of maintaining security and order within the place of detention, or when personal safety or property damage is threatened. Chemical or medical forms of restraint are generally unlawful.

The use of restraints on children must be expressly prohibited, unless assessed and determined to be in the best interests of the child.

---

**① The use of force against immigration detainees is exceptional and explicitly governed by law, and limited to use in self-defence or other measures necessary to protect life and safety**

**Sources:** [SMR](#) 54(1); [BPUFF](#) 4; [PBPPDLA](#) XXIII; [EPR](#) 64, 65, 66

**Tips for monitors:**

- Are there legislation and regulations for the use of force specific to the context of immigration detention? Are they known by the staff?
- What training do staff receive in the use of these measures?



---

**② Where a situation may require use of force, the place of detention prioritizes efforts to defuse the situation with non-violent conflict management strategies**

**Sources:** [BPUFF 4](#); [PBPPDLA XXIII\(2\)](#)

**Tips for monitors:**

- Does staff training include strategies to defuse tense situations?
- Are there any examples of when this has been effective?
- How have staff responded in managing crisis?

---

**③ Arbitrary, abusive, or otherwise excessive use of force by law enforcement officials is a criminal offence**

**Sources:** [BPUFF 7](#); [PBPPDLA XXIII\(3\)](#); [EPR 69](#)

**Tips for monitors:**

- Do staff carry and use weapons (such as fire arms or batons)? If so what are they? Are staff trained to use weapons?
- Can staff be identified either by name or by employee number?
- Is there any evidence of excessive or disproportionate use of force?

---

**④ Use of force is fully documented and reported in an incidents register and in individual case files, and effective review procedures are in place**

**Sources:** [SMR 54\(1\)](#); [BPUFF 6, 22](#); [PBPPDLA XXIII\(3\)](#)

**Tips for monitors:**

- How are instances of use of force registered? Is there a review process in place?
- When is force used against detainees? Where? Why?
- What is the referral process for medical examination?

---

**5 The use of any instruments or methods of restraint are explicitly governed by law and regulation**

**Sources:** [UNCAT](#) 16; [PME](#) 5; [SMR](#) 33, 34; [RPJDL](#) 63-65; [PBPPDLA](#) XXIII(1); [EPR](#) 68; [BR](#) 21(c)

**Tips for monitors:**

- What policies and regulations are in place regarding use of means of restraint?
- Use of restraints is limited to: a. preventing unlawful escape during transfer, b. medical grounds, c. preventing harm, self-harm, property damage.
- What types of restraint are used? Physical including handcuffs? Chemical?
- Are means of restraint used during transfer or deportation/removal?
- Are means of restraint used during external medical or dental examinations or treatment (such as woman giving birth), interviews or hearings?
- Is there any evidence of use of means of restraint on children or pregnant women?

---

**6 Use of restraint is monitored and detainees are medically examined where indicated**

**Sources:** [SMR](#) 34; [BPUFF](#) 5(c); [PME](#) 5

**Tips for monitors:**

- Who monitors the use of means of restraint (check management, a medical doctor, judicial scrutiny)?
- What is the process for being referred for medical examination?

## 4.3 SAFETY, ORDER AND DISCIPLINE

Although it is imperative that security, predictability and order are maintained in a place of immigration detention, rules and disciplinary procedures need to have a light touch suitable to the non-criminal status of immigration detainees.

Furthermore, to ensure a safe and well-ordered community life, it is vital to make sure that there are adequate mechanisms of accountability. This includes ensuring that standards and limitations are provided by law or lawful regulation, decisions are subject to review and there is a regular and rigorous inspection programme.

Monitoring teams will therefore be concerned to scrutinize institutional safeguards and responses and need to examine both the causes and effects of problems such as bullying and victimization.

### 4.3.1 Disciplinary Procedures

In the immigration detention context, it is highly desirable and conducive to the effective maintenance of security and good order if the conduct of detainees is managed first and foremost through a scheme that appropriately rewards good behaviour rather than one that punishes unacceptable behaviour. Nevertheless, it is important for monitoring teams always to bear in mind that in practice reward schemes can fast become punitive if they are not properly managed and rewards are arbitrarily granted or withdrawn.

It is crucial that the team is attuned to the differences between a disciplinary system within the prison context, and internal rules within an immigration detention environment. The register in which all breaches of the internal rules and ensuing procedures and sanctions are recorded needs to be examined in this light.

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**① Discipline and order is only maintained in accordance with the rules and to the extent necessary for safe custody and well-ordered community life**

**Sources:** [SMR](#) 27; [BPP](#) 30; [PBPPDLA](#) XXIII(1); [CPT/Inf](#) (2009) 27 §88; [EPR](#) 56.1, 2; 57.1, 2

**Tips for monitors:**

- Are internal rules clear and available in a number of languages?
- Are internal rules displayed in common areas and known by detainees and staff?
- What types of behaviour attract what types of disciplinary measures?
- Are they set out in law or lawful regulation?
- Who determines the sanctions and on what basis?
- What is the nature of the sanctions imposed?
- Does the detainee have the possibility to defend himself?

---

**② Disciplinary procedures are subject to review and appeal**

**Sources:** [PBPPDLA](#) XXII(1); [CPT/Inf](#) (2009) 27 §88

**Tips for monitors:**

- How does the appeal mechanism work?
- Have any appeals resulted in a favourable outcome for the detainee?

- 
- ③ A discipline register records the details of all disciplinary measures, including date and detail of alleged disciplinary offence, date and detail of hearing and reasons for decision, date and detail of review and reasons for decision, date, detail and duration of the disciplinary measure imposed

Sources: [RPJDL](#) 19, 70

**Tips for monitors:**

- Is the register of disciplinary measures accurate and well maintained?
- What is the nature and duration of sanctions (types, average and longest)? Are disciplinary measures time-limited?
- What is the total number of sanctions overall? Is there any evidence of arbitrary or inconsistent decision-making?

- 
- ④ Disciplinary sanctions applied to children are suited to their special circumstances and vulnerabilities

Sources: [CRC](#) 37(a); [RPJDL](#) 70

**Tips for monitors:**

- Are there instances where disciplinary procedures have been applied to children (number, period)?
- What measures were taken?

### 4.3.2 External Inspection

External inspection systems are necessary to safeguard the rights of immigration detainees. There needs to be a mechanism for regular independent inspection and supervision of the administration of places of immigration detention and the treatment of detainees. The scope of inspections ought to extend to all aspects of immigration detention.

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**① There is regular supervision and inspection of the place of immigration detention and its administration by a competent authority other than the detaining authority**

**Sources:** [BPP](#) 29(1); [SMR](#) 55; [RPJDL](#) 14, 72-74; [PBPPDLA](#) XXIV; [EPR](#) 93.1

**Tips for monitors:**

- Who conducts inspections of places of immigration detention? On what authority?
- How frequently do inspections take place?
- What is the scope of inspections?
- Are inspection reports available?

---

**② Inspectors are appointed by and accountable to the inspecting/supervisory authority and their powers include inspection of all places of detention and hearing and resolving grievances and complaints**

**Sources:** [BPP](#) 29(1); [SMR](#) 36, 55; [RPJDL](#) 72-78

**Tips for monitors:**

- Who appoints inspectors?
- What is the composition of inspection teams (e.g. gender balance and professional capacities)?
- What are their mandate and authorities?

---

**③ Detainees have the right to communicate freely and in full confidentiality with inspectors**

**Sources:** [BPP](#) 29(2); [SMR](#) 36(2); [RPJDL](#) 73; [BR](#) 25(1)

**Tips for monitors:**

- Can detainees communicate freely with inspectors? How regularly? What is the process?
- Is privacy and confidentiality respected?

### 4.3.3 Bullying and Victimization

Bullying and other forms of victimization are forms of violence which also impact a range of other human rights. They can be a problem at the level of staff–detainee relationships, as well as staff–staff and detainee–detainee relationships. All forms of bullying and victimization negatively impact on a custodial environment. The cumulative effect or the failure to respond adequately may amount to a breach of human rights, including inhuman or degrading treatment. Appropriate action is required in all cases.

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**① Staff and detainees are aware that bullying and other forms of victimization are prohibited, know their rights and how to access them**

**Sources:** [BPP 1](#); [ICCPR 10](#)

**Tips for monitors:**

- Is there a bullying and victimization policy?
- How widespread is the problem of bullying and victimization?
- Is there staff training on bullying and victimization?
- Are detainees involved in developing strategies for dealing with bullying and other forms of victimization?
- Are detainees protected from unwanted sexual attention or advances, or exploitation?

---

**② Staff are trained to recognize and respond to incidents of bullying or victimization as early as possible, and to identify individuals or groups that may be particularly vulnerable**

**Sources:** [PBPPDLA](#) XX

**Tips for monitors:**

- Do staff draw on the observations and input of others – detainees, staff, family and friends, other professional visitors – to identify individuals or groups who may be particularly vulnerable to bullying or victimization?
- Are staff able to identify and reduce tensions between detainees of different nationalities, ethnic or religious groups?
- Do staff have a presence in all parts of the place of detention at a level that is appropriate to the location?

---

**③ Allegations of bullying or victimization are responded to in a timely way, properly investigated, and appropriately remedied**

**Sources:** [CoE-TGFR](#) 10.6; [SMR](#) 36; [RPJDL](#) 76-77; [PBPPDLA](#) IX(3), V; [BR](#) 5(1); [BPP](#) 7.1, 33.4; [UNHCR-DG](#) 8, 9.3

**Tips for monitors:**

- Is bullying or victimization by staff managed through staff disciplinary procedures?
- What avenues of complaint are available to victims? With what results?
- Are allegations properly documented?
- Is privacy and confidentiality respected?



### 4.3.4 Handling Emergencies

In any place where people are deprived of their liberty, including immigration detention, there is a need for emergency preparedness. Causes of an emergency or crisis may be internal, external, accidental, negligent, deliberate, or natural disasters. In a place of immigration detention, people have been deprived of their liberty (sometimes in large numbers) and have little possibility of protecting themselves in an emergency. In some countries immigration detention policies and practices mean that places of immigration detention can be ‘pressure-cookers’ of stress and anxiety which can, from time to time, erupt into protests, riots and other disturbances and acts of violence including self-harm.

- 
- 1 There is a comprehensive emergency preparedness policy for the place of detention, which engages staff and detainees, and the primary focus of which is to ensure the safety of immigration detainees, staff, and any visitors**

**Sources:** [PBPPDLA XXIII\(1\)](#)

**Tips for monitors:**

- Do the design and structure of the immigration detention facility minimize the risk of fire and other hazards (e.g. chemical leaks) and natural disasters (e.g. hurricane, flooding) and ensure safe evacuation from the premises?
- What is the impact of such policy on daily life?
- Are staff trained in crisis management strategies?
- Has the place of detention appropriate equipment, such as alarm systems, loudspeakers and fire extinguishers? Are they readily accessible? Is this equipment regularly tested, in good working order?
- Are staff trained to use this equipment?
- Are there alternative communication systems in the event that regular communication systems cannot be used (e.g. due to power cuts)?
- Has implementation of the policy been effective in case of a recent emergency or crisis?

- 
- ② **There is scope to bring in additional support, including emergency services personnel, independent negotiators/interlocutors and medical personnel**

**Sources:** [CoE-TGFR](#) 10.3

**Tips for monitors:**

- Is additional external support readily available at short notice?
- Has it been effective in the case of a recent emergency or crisis?

- 
- ③ **There are clear emergency evacuation procedures and regular fire and evacuation drills, and specific provision is made for persons in situations of vulnerability**

**Sources:** [RPJDL](#) 32

**Tips for monitors:**

- Are there regular alarm tests, fire drills and other emergency evacuation drills?
- Do children and other particularly vulnerable groups benefit from extra protection?

## **4.4 MATERIAL CONDITIONS**

By depriving a person of their liberty, the State assumes responsibility for providing for that person's vital needs such as food and accommodation. It is incumbent on the State to mitigate the loss of liberty as far as possible by ensuring that the detention environment and conditions are respectful of the dignity and non-criminal status of immigration detainees. This means 'avoiding the use of prisons, jails and facilities designed or operated as prisons or jails' (UNHCR-DG 8) and 'that immigration facilities are specifically designed for their purpose' (CPT Standards, Extract from 7<sup>th</sup> Report). Further, care needs to be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. This means that both the detention environment and the living conditions must be decent in every respect. As such, accommodation, sanitation, hygiene,

drinking water, food, clothing, bedding, safe custody of and access to personal property and effects must all be provided to an adequate standard and in a manner that is safe and respectful of the dignity of individual detainees. In addition, the design and physical environment of detention facilities ought to ensure that all detainees have adequate privacy.

#### 4.4.1 Accommodation

Appropriate accommodation is central for any detainees, including asylum-seeker and migrant detainees, when it comes to their material conditions of detention. Quite obviously it has a massive influence on the way they feel, depending *inter alia* on the type and size of accommodation, its cleanliness, the time they spend in it, or the possibility it offers to maintain family life.

Regarding children, including unaccompanied or separated asylum-seeker and migrant children, it is crucial that they are housed separately from unrelated adults.

The size, the natural or artificial light, the number of inmates in a given room, and the furniture are key conditions for monitoring teams to check.

Considering the nature of immigration detention, detainees ought not to be confined to their room all day long but need to be able to move freely within the facility.

---

#### ① The number of detainees does not exceed the authorized maximum sleeping capacity of the place of detention

Sources: [SMR](#) 9(1); [PBPPDLA](#) XVII

##### Tips for monitors:

- What is the official capacity of the place?
- What is the occupancy rate?

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**② The size of the room(s) is adequate and provides for single occupancy except in the case of couples and families**

**Sources:** [SMR](#) 9(1); [PBPPDLA](#) XII(1); [CPT/Inf](#) (97) 10 §29; [EPR](#) 18; 96

**Tips for monitors:**

- What is the size of the room(s) (square metres per person)?
- How are individuals allocated in rooms?
- Are needs of persons in situations of vulnerability taken into account?
- In case of multiple occupancy rooms, are cultural/ethnicity/religious considerations taken into account?

---

**③ Sleeping accommodation for all immigration detainees is well maintained, safe, clean and with adequate furniture**

**Sources:** [SMR](#) 10; [PBPPDLA](#) XII(2); [CPT/Inf](#) (97) 10 §29; [EPR](#) 19.2; [EU-RD](#) Recital (18), (17)

**Tips for monitors:**

- Are children, including unaccompanied or separated children, housed separately from unrelated adults?
- Do all detainees have their own bed and mattress and bedding/blankets?
- How is the room furnished?
- In the case of shared sleeping accommodation, do detainees have lockable individual storage space?

---

**④ The room(s) have natural light and allow circulation of fresh air**

**Sources:** [SMR](#) 11(a); [PBPPDLA](#) XII(1)

**Tips for monitors:**

- Is there natural light in the room?
- Can windows be opened?
- Do windows give enough light to read and work?

---

**5 Artificial light is sufficient to enable detainees to read or work**

Sources: [SMR](#) 11(b)

**Tips for monitors:**

- Do detainees have control of the light switches in sleeping accommodation?

---

**6 There is adequate and safe heating and/or cooling and ventilation suitable to climatic conditions, and in good working order**

Sources: [SMR](#) 10; [PBPPDLA](#) XII(1)

**Tips for monitors:**

- What is the temperature in the room?
- Is the heating or ventilation functioning properly?
- Do detainees have control over heating, cooling and ventilation?

---

**7 Couples are provided with suitable accommodation, including couples who may have special vulnerabilities such as unmarried or LGBTI people**

Sources: [UNHCR-DG](#) 9; [PBPPDLA](#) XIX

**Tips for monitors:**

- What accommodation is provided for couples?
- Is there any evidence of discrimination against some categories of couples (unmarried, LGBTI)?

---

**8 Family accommodation is provided, and is safe and suitable for children**

Sources: [SMR](#) 8(d); [PBPPDLA](#) XIX; [EU-RD](#) 12, 18.2 (a)

**Tips for monitors:**

- What accommodation is provided for families?
- Are children housed with unrelated adults?

---

## 9 Sleeping accommodation for women is separated from men

**Sources:** [SMR](#) 8(a), 23; [UNHCR-DG](#) 8 §48(v); [PBPPDLA](#) XIX

### Tips for monitors:

- Are women provided with separate sleeping accommodation?
- Is their privacy guaranteed?
- Is their safety ensured?

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## 10 Detainees are supplied with clean bedding

**Sources:** [SMR](#) 19; [PBPPDLA](#) XII(1); [EPR](#) 21

### Tips for monitors:

- What bedding do detainees receive on arrival? Is it appropriate to climatic conditions?
- How often are sheets changed?
- Who is in charge of laundering beddings?
- Does bedding look and smell clean?

---

## 11 Where detainees are in places of criminal detention, e.g. prisons or police stations, immigration detainees are not co-mingled with those detained under the criminal law

**Sources:** [ICCPR](#) 10(2)(a); [CMW](#) 17(2); [BPP](#) 8; [SMR](#) 8(b); [RPJDL](#) 17; [WGAD-D5](#) p.9; [UNHCR-DG](#) 8 §48(iii); [EXCOM](#) 44(f); [PBPPDLA](#) XIX; [CPT/Inf](#) (97) 10 §27, 28

### Tips for monitors:

- Are immigration detainees separated from those detained under criminal law? Are they held e.g. in a dedicated aisle or section of the facility?
- Are they held for prolonged periods of detention? Are they held in exceptional cases (e.g. because of a known potential for violence)?

### 4.4.2 Food and Drinking Water

In the context of immigration detention, giving effect to the right to food is a matter of health and safety, as well as respect for the dignity of the human being. Food of nutritional value suitable to age, health, and cultural/religious background, is to be provided. Special diets for pregnant or breastfeeding women need to be available. Facilities in which the food is prepared and eaten need to respect basic rules on sanitation and cleanliness. Thus detainees ought to have a sufficient, healthy, varied and balanced diet, free of charge.

They ought also to be permitted to order food from outside the facility at their own expense, either through the administration or through their family or friends.

In addition, engagement in the selection and preparation of food is an important daily activity that is purposeful and communal. It can be a way to (re)-establish contacts with the community from the country of origin in the host country. Moreover, it maintains, improves or confers an important life skill that is essential upon release or removal.

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#### ① Immigration detainees are provided with sufficient food of nutritional value and a varied and balanced diet, free of charge

**Sources:** [SMR](#) 20(1); [UNHCR-DG](#) 8 §48(xi); [PBPPDLA](#) XI(1); [EPR](#) 22

##### **Tips for monitors:**

- Is the food of sufficient quantity, quality and varied?
- Are special dietary requirements (vegetarian, religious, medical) catered for?
- Who decides on the menus? Do medical personnel play a role?
- What is the daily budget for food?
- What do detainees say about the food? What does it taste like?
- Can detainees buy food inside the facility? How do the prices compare with outside?

---

## ② Meals and drinks/water are provided at regular intervals

**Sources:** [SMR](#) 20; [PBPPDLA](#) XI; [EPR](#) 22.4

### **Tips for monitors:**

- Can detainees access their own drinking water at all times? What is its colour, smell, taste?
- How many meals do immigration detainees receive each day? At what time?
- Is the food hygienically prepared and served? Is it well presented? Is it respectfully served?
- Where are the meals taken? Is there a meals register?

---

## ③ Detainees have the possibility to cook their own food

**Sources:** [BR](#) 5

### **Tips for monitors:**

- Can detainees cook their own food? At any time?
- Where and how can detainees obtain food to cook?
- Do persons have access to food outside meal times?

---

## ④ The nutritional provision for pregnant women and nursing mothers is sufficient to maintain an adequate standard of health for mothers and babies

**Sources:** [CEDAW](#) 12(2); [BR](#) 48; [UNHCR-DG](#) 8 §48(xi); [PBPPDLA](#) XI(1)

### **Tips for monitors:**

- Are there special dietary arrangements for pregnant women or nursing mothers?



---

**⑤ Religious, cultural or other special dietary requirements relating to food are fully observed**

**Sources:** [BPTP](#) 3, 6; [PBPPDLA](#) XI(1)

**Tips for monitors:**

- How are special dietary requirements taken into account, including regarding storage, preparation and distribution?
- Are detainees able to communicate their special dietary needs?
- Is there any evidence of discrimination?
- Are religious representatives consulted when considering food related issues?

---

**⑥ The medical officer regularly inspects and advises on the storage, quantity, quality, preparation and service of food**

**Sources:** [SMR](#) 26(1)(a); [EPR](#) 22.6

**Tips for monitors:**

- Is the medical officer associated with the food chain?
- Does s/he make any recommendation related to nutritional matters?
- Are menus broken down by nutritional value?

---

**⑦ Cooking facilities, dining areas and eating equipment are safe, clean, hygienic, well ventilated and well maintained**

**Sources:** [SMR](#) 14; [PBPPDLA](#) XI(1)

**Tips for monitors:**

- Where are the meals taken?
- How is the food served?
- Are catering facilities/kitchen clean, hygienic and in good repair?
- Are catering facilities regularly inspected for health and safety?
- Do detainees have access to them?

### 4.4.3 Sanitation and Hygiene

Maintaining good bodily hygiene is a question of health and of respect for oneself and others. Personal hygiene can also be linked with religious practices that have to be respected.

Moreover, access to proper sanitation as well as to shower and bathing facilities is essential as a means of reducing the possible spread of illness among detainees and staff. As stipulated in the SMR 13, 'Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.'

Accordingly, detaining authorities must take all the necessary measures to ensure access to clean sanitation and bathing installations. They ought also to pay special attention to the specific needs of women, small children and babies.

---

#### ① **Detainees have ready and unrestricted access to well-maintained, clean, decent and private sanitation facilities**

**Sources:** [SMR 12](#); [PBPPDLA XII\(2\)](#); [EPR 19.3](#)

##### **Tips for monitors:**

- Are sanitary, hygiene and washing facilities working?
- Are sanitation facilities separated for women and men?
- What is the ratio of toilets to the number of detainees?
- Is access granted at night?
- Is privacy ensured?
- Is there any special provision for women and other persons in situations of vulnerability?
- Are cleaning materials and equipment readily available?

---

**② Detainees have access to adequate and private bathing and shower facilities, at a temperature suitable to the climate and as frequently as necessary for general hygiene**

**Sources:** [SMR](#) 13; [EPR](#) 19.4

**Tips for monitors:**

- Do detainees have access to water (cold and hot) at all times?
- What is the colour and smell of the water?
- Are the bathing facilities sufficient in number?
- Are bathing and shower facilities separate for women and men?
- Is there any evidence of discrimination in minority groups' access to bathing facilities? Is there privacy in bathing facilities?

---

**③ All detainees are supplied with free toiletries necessary for health, cleanliness and basic dignity**

**Sources:** [SMR](#) 15, 16; [PBPPDLA](#) XII(2); [EPR](#) 19.6

**Tips for monitors:**

- What items are distributed to detainees (men/women) upon arrival?
- Are gender-specific or other special needs adequately accommodated? Are women offered hygiene packs?
- How and how often can detainees obtain replacement supplies?

---

**④ Babies and small children have a sufficient supply of nappies**

**Sources:** [CRC](#) 37(c); [SMR](#) 15; [PBPPDLA](#) XII(2)

**Tips for monitors:**

- Are nappies available free of charge?
- Who is in charge of supplying nappies?
- In the case of washable nappies, is additional laundry equipment provided?

#### 4.4.4 Clothing

People in immigration detention are not in detention as a punishment and should have the right to wear their own clothes. However, clothing needs to be provided for them if they do not have sufficient suitable clothing. It ought to be adequate, available, readily and safely accessible, suitable to the climate, culturally appropriate, clean and fit for use, all on a non-discriminatory basis.

Moreover, detainees must not only have adequate clothing, they must also have access to laundry facilities or services and soap, so that clothing can be washed regularly.

---

#### ① Detainees are allowed to wear their own clothing and shoes

**Sources:** [CMW](#) 17(1); [SMR](#) 88(1); [EPR](#) 97; [UNHCR-DG](#) 8(x)

**Tips for monitors:**

- Can detainees wear their own clothes?
- Can detainees wear their own clothes for hearings and other external appointments?

---

#### ② Where a detainee does not have their own clothes, they are provided with suitable and sufficient clothing and shoes adapted to the context

**Sources:** [SMR](#) 17; [PBPPDLA](#) XII(3); [EPR](#) 20, 97

**Tips for monitors:**

- If needed, are detainees provided with suitable clothing on arrival?
- Is the clothing suitable to the climate?
- When clothing is provided, how does it look? Is the clothing suitable to meet religious or cultural requirements of particular detainees?
- Is the clothing suitable for different purposes e.g. work or sport?

- Is the clothing different to that issued to convicted prisoners in the same jurisdiction?
- Where is clothing sourced from?
- Are clothing, shoes and underwear issued to detainees appropriate, including for children, pregnant women and the disabled?
- Do people being released, deported or repatriated wear suitable clothing that is clean and fit for use?

---

### ③ Detainees have ready access to laundry facilities or services

#### **Tips for monitors:**

- Do detainees have access to laundry facilities? Under what conditions and frequency?
- Are the laundry and drying facilities safe, well lit, clean, well ventilated and in a good state of repair?
- Is soap provided to detainees?

#### **4.4.5 Cash and Possessions**

One of the principal effects of the deprivation of liberty is the loss of individual autonomy. As such, immigration detainees are often deprived of the right or opportunity to make even simple choices and decisions about their day-to-day life; a factor that can negatively affect their sense of self-respect and dignity. In this connection, there is an obligation to ensure that any interference with individual autonomy is kept to a minimum, and restrictions imposed are only to the extent necessary to maintain security and a well-ordered community life. Access to and use of personal cash and possessions represent one such example.

---

**① There are clear and readily accessible rules and regulations about the retention of property on admission to the place of detention**

**Sources:** [SMR 43](#); [RPJDL 35](#); [EPR 31](#)

**Tips for monitors:**

- Do the facility's rules outline procedures for the retention and return of property?
- Are detainees and staff aware of the applicable rules and regulations?
- Is an inventory of cash and possessions made upon admission?
- Is a copy of their financial record made available to detainees?

---

**② Detainees have readily accessible lockable storage for valuables and other property not surrendered into safe custody by the detainee**

**Sources:** [SMR 43\(1\)](#); [RPJDL 35](#)

**Tips for monitors:**

- How and where are the valuables kept? Can detainees access their valuables?
- Have there been any cases of theft? How were they registered? And investigated?

---

**③ Immigration detainees have access to their own cash or can receive cash or other effects from outside the place of detention**

**Sources:** [SMR 43\(3\)](#)

**Tips for monitors:**

- What is the procedure to get the cash from authorities?
- Is the cashier of the place of detention authorized to receive cash from family or friends of detainees?
- How is any cash deposit recorded?

## 4.5 ACTIVITIES

The extent to which a varied and appropriate regime of activities (including access to the outside world and meaningful activities) exists and is institutionally encouraged is a strong indicator of a detention environment that actively seeks to minimize the risks associated with the deprivation of liberty. However, the range of activities will depend on the average length of stay. Monitors can check whether sufficient resources are allocated and whether adequate arrangements exist for family visits, vocational training, work and remunerated activities, outdoor exercise, leisure and cultural activities and the right to practise one's religion.

Indeed the absence of purposeful activity is one of the most pervasive and damaging aspects of immigration detention. It stems from the view that immigration detention is a practice that needs only to focus on 'containment', and where the future well-being of the immigration detainee is not recognized to be a compelling social responsibility. As a result, any steps to prepare immigration detainees for life outside detention, wherever that may be, ought not to be treated as a secondary consideration. If they are, the damaging effects of boredom, helplessness and hopelessness are likely to represent a significant, costly, and on-going social and medical problem, both inside and outside the place of detention, particularly in cases where detention is or has been prolonged.

### 4.5.1 Visits and Communication with the Outside World

Visits by family and others are a right, not a privilege. They are an important resource, not only in helping immigration detainees to cope with their predicament and the insecurity of their circumstances, but also in helping them prepare for life after detention, whether in the country of destination or asylum, or in the country of origin. However, the reality in immigration detention is that visits by family members are in practice

difficult. Nevertheless, the guiding principle ought to be the promotion of contact with the outside world, subject only to limitations of security and then only if there is evidence of a compelling nature. Monitoring teams must view with some concern the practice of establishing places of detention in remote or otherwise inaccessible locations that make the possibility of receiving visitors impractical or impossible.

Accordingly, through visits and other means of communication, immigration detainees must be able to maintain contact with a legal adviser, family and friends, support groups, religious representatives and social care workers and medical practitioners. They ought also to have ready access to UNHCR, ICRC, Red Cross/Red Crescent tracing services and, at their own initiative, consular services.

Asylum-seekers in detention ought to be able to make regular contact (including through telephone or internet, where possible) and receive visits from relatives, friends as well as religious, international and/or non-governmental organizations, if they so desire. In particular, access to and by UNHCR must be assured.

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**① The place of detention is reasonably accessible for regular visits from family, friends and community support groups**

**Sources:** [BPP](#) 20

**Tips for monitors:**

- What is the location of the place of detention?
- How far is the place of detention from public transport?
- Is there any financial or material support provided to facilitate visits, particular from families?



## ② Detainees have the right to receive visits by family and others

**Sources:** [BPP](#) 19; [UNHCR-DG](#) 8 (vii); [EPR](#) 24.1; 99; [EU-RD](#) 10.4; [BPPDLA](#) XVIII

### Tips for monitors:

- Were detainees informed of the right to receive visits? Was the information provided in a language they understand?
- When and how often can visits take place?
- What is the length of such visits?
- From whom (apart from close relatives) can detainees receive visits?
- Can detainees refuse visits? What is the procedure?
- Have visits ever been refused/prevented?

## ③ Reasonable facilities are provided for receiving visitors and visiting detainees is actively encouraged by staff and management

**Sources:** [SMR](#) 92; [EPR](#) 24.4

### Tips for monitors:

- What are the conditions of visiting facilities (open or closed visits)?
- How many rooms (if any) are available for visits?
- Are privacy and confidentiality of visits respected?

## ④ Conjugal visits by a spouse or partner are permitted and encouraged

**Sources:** [ICCPR](#) 10(1), 17, 23; [BPPDLA](#) I

### Tips for monitors:

- Do visiting facilities enable conjugal visits?
- Is there any evidence of discrimination against unmarried couples and/or LGBTI couples?

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**⑤ Communication with family and friends in the country of detention and in countries of origin and transit is facilitated**

**Sources:** [ICCPR](#) 17; [UNHCR-DG](#) 8 (vii); [RPJDL](#) 60, 61; [CPT/Inf](#) (2009) 27 §87; [EPR](#) 24.5

**Tips for monitors:**

- What is the system in place?
- Can detainees freely communicate with the outside world? How? How often? Is there a policy or protocol setting out criteria for communication with the outside world?
- Are detainees ever deprived of communication as a disciplinary measure?
- Have detainees access to email and internet?

---

**⑥ Detainees have easy and ready access to UNHCR, ICRC and/or the Red Cross or other organisations and, at their own initiative, consular officials or diplomatic missions**

**Sources:** [CMW](#) 16(7); [UNHCR-DG](#) 8 (vii); [WGAD-D5](#) p.2, 10; [EU-RD](#) 10.3; [CPT/Inf](#) (97) 10 §31; [CPT/Inf](#) (2009) 27 §83, 87; [EPR](#) 37

**Tips for monitors:**

- Are detainees visited by UNHCR officers?
- Are detainees visited by ICRC and/or Red Cross/Red Crescent staff?
- Are detainees protected against unsolicited attempts by consular officials to contact them?
- Are detainees supported to contact a consular mission if they do not respond to their request?

**7 Detainees have easy and ready access to telephones (to make outgoing calls in private at reasonable cost) and to receive unmonitored and uncensored incoming telephone calls at any time**

**Sources:** [BPP](#) 18(3), 19; [UNHCR-DG](#) 8 (vii); [RPJDL](#) 61; [PBPPDLA](#) XVIII; [CPT/Inf](#) (97) 10 §31

**Tips for monitors:**

- Can detainees make private phone calls? How often (frequency, duration, number of telephones in good working order, quality of lines, respect for time differences)?
- What is the system for payment?

**8 Detainees have daily and uncensored access to newspapers, television, and/or radio**

**Sources:** [SMR](#) 39, 90; [RPJDL](#) 62; [PBPPDLA](#) XVIII; [CPT/Inf](#) (97) 10 §29; [EPR](#) 24.10; 24.12; 99 (c)

**Tips for monitors:**

- Are newspapers/magazines made available to detainees? In languages they understand? Are they free of charge?
- Is TV and/or radio available? If so, in what language are these available?

**9 Detainees can send and receive post to and from friends and family, at public expense if necessary**

**Sources:** [BPP](#) 19

**Tips for monitors:**

- What are the steps to send a letter?
- How can detainees get the necessary materials (paper, envelopes, stamps)?
- Are stamps free of charge?
- Are letters and parcels monitored, censored or otherwise restricted? If so, on what basis?

### 4.5.2 Education and Skills Development

Education, including vocational and skills training, is an important element in preparing immigration detainees for reintegration into society, wherever that may be, and for stimulating their personal development. Education can also meet specific needs of the detainee population, such as providing literacy and numeracy education, or teaching detainees the local language or the *lingua franca*.

When children are held in immigration detention facilities, regardless of their status or length of stay, they have a right to access at least primary education. Preferably children ought to be educated off-site in local schools.

The uncertainty of the duration of immigration detention and where detainees will end up ought not to prevent or inhibit them from embarking on such initiatives, as detainees may be able to complete them following release, and in any event they have an inherent value as a purposeful and stimulating activity.

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#### ① Education is provided according to identified needs, including for instance those of illiterate detainees

**Sources:** [SMR 77\(1\)](#); [UNHCR-DG 8 \(xiii\)](#); [PBPPDLA XIII](#); [EPR 28](#); [EU-RD 14](#)

##### **Tips for monitors:**

- What type of education is on offer? In what languages?
- Is the local language or the *lingua franca* taught to all immigration detainees?
- What is the percentage of detainees participating in educational activities?
- Can all detainees who wish to, access educational activities?
- Is access to education provided in a fair and non-discriminatory manner?
- Are classes adapted to individual needs?
- Is literacy part of the initial screening when persons arrive at the facility? If so, how is it done? Who does it? What is the process?

- Who provides literacy classes?
- Are specific funds allocated for education?
- Is education or vocational training remunerated?

## ② Educational opportunities include vocational training designed to maintain or enhance skills and labour force participation

**Sources:** [CRC](#) 28(1)(b); [CMW](#) 17(7); [ATP](#) 6(3)(d); [RPJDL](#) 42-44; [BR](#) 37; [ACHR AP](#) 13(3)(b); [PBPPDLA](#) XIII; [EU-RD](#) 12

### Tips for monitors:

- Do detainees have access to vocational training? Does the teaching or training involve outside teachers or trainers?
- Do the diplomas or educational certificates awarded to detainees indicate the immigration status of the individual?

## ③ School-age children have access to education, preferably in local schools, regardless of the duration of their detention

**Sources:** [CRC](#) 28(1)(a); [UNHCR-DG](#) 8 (xiii); [CMW](#) 17(7), 30, 43, 45; [RPJDL](#) 12, 38, 59, 79; [ACHR AP](#) 13; [ACHRP](#) 17; [EPR](#) 28.3; [EU-RD](#) 14; [PBPPDLA](#) XIII

### Tips for monitors:

- What levels of education are available? Are there classes in different languages?
- Who provides the education?
- What is the teacher/student ratio?
- Where do educational activities take place? In the facility? Outside? Suitability of facilities?

---

**④ Child and young adult detainees above compulsory school age who have not completed their education are permitted and encouraged to continue their education**

**Sources:** [RPJDL](#) 39; [SMR](#) 77(1); [ACHR AP](#) 13(3)(d); [ACHRP](#) 7; [PBPPDLA](#) XIII

**Tips for monitors:**

- Are there young adult detainees benefiting from education programmes?
- What type of education is offered?

### **4.5.3 Work and Remunerated Activities**

Given that immigration detainees are not held under sentence they cannot be required to work, and some detainees may be unable to work even if they want to. However, efforts ought to be made to provide work opportunities. Where possible, immigration detainees ought to have the opportunity to work in the local community.

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**① Detainees are able to work in the place of detention**

**Sources:** [ATP](#) 6(3)(d); [SMR](#) 89; [RPJDL](#) 45; [BPTP](#) 8; [BR](#) 60; [CMW](#) 17(7); [PBPPDLA](#) XIV; [EPR](#) 26

**Tips for monitors:**

- What type of work is available?
- Can detainees choose the type of work they wish to perform?
- Is the work remunerated?
- Who is in charge of allocating work? Is the process fair and equitable?
- Are there opportunities to work in the local community?

## ② Work is not compulsory

**Sources:** [ILO-C29](#); [ILO-C105](#); [SMR 89](#); [PBPPDLA XIV](#)

### **Tips for monitors:**

- Is the work voluntary?
- What are the conditions of work and how do they compare with working conditions in the outside world?
- Are the rights of those working inside or outside the place protected?
- Are detainees who do not choose or are unable to work provided with a cash allowance sufficient to meet essential needs?
- Is there any evidence of forced and/or child labour?

## ③ Opportunities for work are safe, decent and not exploitative

**Sources:** [SMR 72, 76](#); [PBPPDLA XIV](#)

### **Tips for monitors:**

- Do places of work have adequate natural light, fresh air and sufficient artificial light?
- Is remuneration adequate?
- How many rest days do detainees have per week?

### 4.5.4 Outdoor Exercise, Leisure and Cultural Activities

Given the non-criminal status of immigration detention, detainees ought not to have to remain in their room all day long but need to be able to move freely within the facility.

The importance of outdoor exercise for one's mental and physical well-being is widely recognized. Like all others deprived of their liberty, immigration detainees ought accordingly to have access to appropriate activities and facilities for outdoor exercise. Such facilities ought to be spacious and preferably in view of natural growth and vegetation. This

means, for example, that a small walled yard does not offer sufficient opportunity for exercise in the open air.

In addition to the general health benefits, outdoor exercise and activities can have the added benefit of reducing tensions and promoting good relations. Such activities have a real capacity to foster feelings of self-worth for all.

Everyone has the right to rest and leisure and to take part in cultural life. Immigration detainees are no exception. Such activities are important for personal development, physical and mental health, and social and cultural inclusion. They are also a useful way of breaking down barriers. The extent to which participation in structured and unstructured recreational, leisure and cultural activities is institutionally encouraged is a strong indicator of whether the detention environment actively seeks to minimize the negative effects of the deprivation of liberty.

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**① Immigration detainees are able to move freely within the facility and have at least one hour per day of suitable exercise in the open air**

**Sources:** [SMR](#) 21(1); [RPJDL](#) 47; [UNHCR-DG](#) 8(viii); [CPT/Inf](#) (97) 10 §29; [EPR](#) 25, 27; [EU-RD](#) 10.2

**Tips for monitors:**

- Where the time spent outside the room is limited in length, what reasons do staff give for such restrictions?
- How many hours a day can detainees be outside?
- What exercise or activities are available?
- Do detainees have, or are they provided with, clothing for outdoor exercise that is suitable to the climate?



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**② Child and young adult detainees can participate in physical and recreational activities appropriate to their developmental and physical needs**

**Sources:** [SMR](#) 21(2); [RPJDL](#) 47

**Tips for monitors:**

- What recreational activities are available?
- What organized activities are offered to detainees (sports, cultural)?
- Do they benefit from additional time to use facilities?

---

**③ Detainees have access to spacious, safe, clean and well maintained exercise facilities**

**Sources:** [PBPPDLA](#) XIII; [UNHCR-DG](#) 8(viii)

**Tips for monitors:**

- Do detainees have access to exercise facilities?
- What facilities are on offer?
- What is the size of the exercise space?
- Are the outdoor facilities suitable for sports, physical exercise and leisure-time activities?
- Are there suitable indoor exercise alternatives?

---

**④ Detainees have access to reasonable quantities of cultural and informational material**

**Sources:** [BPP](#) 28; [SMR](#) 78, 90; [PBPPDLA](#) XIII; [UNHCR-DG](#) 8(xii); [EPR](#) 27.6

**Tips for monitors:**

- What cultural activities are available?
- Is television accessible? If so where and in what language?

---

**5 All detainees have regular access to an adequately stocked library**

**Sources:** [SMR](#) 40; [RPJDL](#) 41; [PBPPDLA](#) XIII

**Tips for monitors:**

- Are any conditions placed on access to library facilities?
- What types of materials (recreational and instructional books, newspapers, dictionaries, legal reference materials and foreign language videos/DVDs) are available?
- Are materials available in languages spoken by detainees?

---

**6 All detainees, and in particular child and young adult detainees, have adequate opportunities to develop their interests and skills, including arts and crafts**

**Sources:** [RPJDL](#) 47

**Tips for monitors:**

- What opportunities exist for detainees to do arts and crafts? Music?

### **4.5.5 Religion**

In the context of immigration detention, it is crucial that religions or beliefs of all kind are respected and protected, even if they are practised by religious minorities who may be the subject of hostility from a dominant religious community either inside or outside the place of detention.

Under Article 18 of the ICCPR, ‘everyone has the right to freedom of religion and belief.’ This includes the right to have a religion or belief, to choose and adopt a religion or belief, and to engage individually or in community in worship, observance, practice and teaching. These freedoms are so fundamental that they cannot be derogated from, even in time of public emergency.

As such, freedom of worship extends to ritual and ceremonial acts that give direct expression to belief, as well as various practices integral to such acts. In the context of immigration detention, this may include, for instance, the creation of a place of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays, festivals and days of rest.

Religion or belief often regulates diet, clothing and rituals associated with certain stages or milestones in life. The freedom to manifest one's religion or belief is 'subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others' (ICCPR, Article 18(3)). In this connection, the starting point ought to be the need to protect the rights of all detainees guaranteed under the Covenant.

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**① The right of each detainee to practise his or her religion fully, alone or in community with others, is respected**

**Sources:** [ICCPR](#) 18; [CMW](#) 12; [CSR](#) 4; [CSSP](#) 4; [ACHR](#) 12; [UNHCR-DG](#) 8(ix); [BPDPDLA](#) XV; [EPR](#) 29

**Tips for monitors:**

- Are the religious needs of the immigration detainee population met?
- Which religions are represented in the place of detention (number of religions, number of adherents)? Are minority religious beliefs and practices respected?
- Are prayer times respected?
- Are there any conditions or limitations on access to religious worship or pastoral care?

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**② Private pastoral support and care is available at the detainee's request on a regular basis and at a time of personal need, including in preparation for release, removal or transfer**

**Sources:** [SMR](#) 41(3)

**Tips for monitors:**

- What is the availability of pastoral care and support?
- What are the criteria for appointment of religious representatives (who appoints, who pays)?
- What is the frequency of and level of participation in religious services?

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**③ All detainees are able to participate in religious services**

**Sources:** [SMR](#) 42; [PBPPDLA](#) XV

**Tips for monitors:**

- Which religious services are available?
- Where do religious services take place? How often?
- Are detainees able to celebrate their major cultural and religious festivals?

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**④ Detainees are able to obtain, keep and use items of religious significance, including books of religious observance and instruction**

**Sources:** [ICCPR](#) 18; [CMW](#) 17(7); [CSR](#) 4; [CSSP](#) 4; [SMR](#) 42; [RPJDL](#) 48; [ACHR](#) 12; [CFREU](#) 10; [ECHR](#) 9; [PBPPDLA](#) XV

**Tips for monitors:**

- Is there evidence of religious items being damaged or confiscated?
- Have any complaints been made in that regard? With what outcome?

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**⑤ Detainees who do not adhere to any religious belief and who do not wish to practise a religion are not obliged to do so and are not discriminated against**

**Sources:** ICCPR 18; ACHR 12; CFREU 10; ECHR 9

**Tips for monitors:**

- Is there any evidence of discrimination against such persons? By the authorities? By co-detainees?
- Have protective measures been taken in that regard?

### **4.5.6 Welfare and Counselling**

For immigration detainees, the need for welfare and counselling<sup>73</sup> support is an on-going one, and can be crucial to ensuring as smooth a transition as possible into detention as well as out of it. All immigration detainees ought to benefit from welfare and counselling support during detention and particularly when it reaches its endpoint, especially if the outcomes of any substantive protection or immigration procedures are uncertain. Welfare and counselling support may take a secular form or may include the support of pastoral care workers, and will often be useful in assisting detainees to come to terms with the outcomes of their cases.

It is important to ensure that welfare workers, counsellors, and pastoral care workers are not professionally compromised or otherwise implicated in the outcome or consequences of procedures, and that their role is not seen as a substitute for appropriate legal advice or assistance.

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- ① Welfare and counselling services are provided to assist detainees regarding practical problems caused by immigration detention and to help detainees prepare (including psychologically) for release, transfer or removal**

**Sources:** [ATP](#) 6(3)(b); [BR](#) 60; [UNHCR-DG](#) 8 (vi)

**Tips for monitors:**

- Are welfare, social work and counselling services available? Are social workers present in the facility? What role do they play? Can they do psychosocial assessments?
- Are qualified and culturally aware counsellors available?
- Do welfare and counselling services respect the detainee's right to privacy and confidentiality?
- Do they assist detainees in contacting their legal counsels?
- Do they assist detainees in communication with family, friends and support groups?

- 
- ② If requested, detainees are accompanied by welfare and counselling support at the time of release, transfer or removal**

**Sources:** [CoE-TGFR](#) 15.2; [SMR](#) 60(2); [RPJDL](#) 79; [BR](#) 46; [BPTP](#) 10

**Tips for monitors:**

- Are released, transferred or removed detainees provided with contact details of welfare and counselling support professionals in the host country?
- Are detainees accompanied during release, transfer or removal?

## 4.6 HEALTH CARE

The physical and mental health of immigration detainees is particularly important for several reasons. First, deprivation of liberty denies them the possibility to care for their health themselves. Second, they may have particular physical and mental health needs arising from past mistreatment as well as past and present vulnerabilities. Third, there is a high chance that immigration detention will have a detrimental impact on detainees' physical and mental health. The responsibility to respect, protect and fulfil the right to health of immigration detainees necessarily extends to the care and treatment of pre-existing conditions and ought to be of the same quality and standard as is afforded to anyone living in the community.

Children, including unaccompanied or separated children, have the right to regular check-ups, not just response care.

The conduct of medical professionals in a detention environment is crucial to detainees' sense of safety and respect. In this regard, one of the most important aspects of the ethical conduct of medical professionals is respect for principles of patient consent and confidentiality. These are issues that ought to be of particular concern to the monitoring team.

### 4.6.1 Access to Medical Care

Detainees need access to free medical care of a quality equivalent to that on the outside. This is all the more important since deprivation of liberty by itself may heighten an individual's need for medical care.

At the time of initial arrest and detention, all immigration detainees need to be screened by a suitably qualified medical practitioner in order to detect pre-existing illnesses or conditions as well as injuries that may have been sustained in the course of arrest or detention. The screening procedure is also important for identifying contagious or communicable diseases. Thereafter, medical care must be available, accessible, acceptable (i.e. ethical and culturally appropriate), scientifically and

medically appropriate and of good quality. This means that access to medical care and information necessary to benefit from it must be accorded without discrimination of any kind, must be physically accessible, and must be free of charge.

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**① Health screening is provided on arrival by a suitably qualified medical doctor in private (or by a fully qualified nurse reporting to a doctor in private and as soon as possible after admission)**

**Sources:** [CRC](#) 24; [BPP](#) 24-25; [SMR](#) 24; [UNHCR-DG](#) 8 (vi); [PBPPDLA](#) IX(3); [CPT/Inf](#) (97) 10 §30, 31; [CPT/Inf](#) (2009) 27 §82; [EPR](#) 42.1

**Tips for monitors:**

- Do detainees have access to a medical doctor from the outset of their detention?
- What is the procedure for health screening upon arrival?
- Does medical screening include screening for transmissible diseases, including tuberculosis?
- Are free, qualified and impartial interpreters readily available?
- How is the medical file transmitted in case of transfer?



## ② All detainees have full and equal access to free health care services

**Sources:** [CRC](#) 24; [BPP](#) 24; [SMR](#) 25; [RPJDL](#) 50; [BR](#) 6, 9; [ACHR AP](#) 10; [UNHCR-DG](#) 8 (vi); [PBPPDLA](#) X; [EPR](#) 39; [EU-RD](#) 19; [ACHRP](#) 16; [CPT/Inf](#) (97) 10 §31; [CPT/Inf](#) (2009) 27 §87

### Tips for monitors:

- What are the procedures to gain access to health care services?
- How long do detainees have to wait to get a medical consultation?
- Does this include women's specific health care needs (gynaecological services, reproductive health care)?
- Is there any evidence of discrimination in access to medical services?
- Are previous diagnoses or care regimes such as prescriptions (e.g. anti-depressants, HIV protocols) honoured?
- Is it possible to get a second medical or dental opinion?
- Do detainees have access to specialized treatment, such as psychiatric treatment, if required, in specialized institutions or civilian hospitals, as appropriate?
- Are free, qualified and impartial interpreting services readily available for medical consultations?
- What is the system in place in case of a medical emergency?

## ③ Health care services are provided in conditions that respect and maintain decency, privacy and dignity, and preferably through services in the community

**Sources:** [ICESCR](#) 12; [RPJDL](#) 49; [ACHR AP](#) 10; [ACHRP](#) 16; [PBPPDLA](#) X; [EPR](#) 40; 42; [EU-RD](#) 19; [UNHCR-DG](#) 8 (vi)

### Tips for monitors:

- What are the conditions of the medical facilities?
- Do detainees go outside the place of detention for medical consultations?
- Is the detention status mentioned in the course of medical consultation?

---

**④ Detention or segregation on public health grounds is governed by quarantine and disease control policies and legislation**

**Sources:** [SMR](#) 24; [EPR](#) 42.3(f)(g)

**Tips for monitors:**

- What is the procedure to segregate a detainee on health grounds? (Who takes the decision; how is it reviewed?)
- How many detainees were segregated on public health grounds at the time of the visit?
- Is any medical oversight put in place?
- Is segregated accommodation equipped for medical treatment?

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**⑤ Medical examinations are conducted in private, in confidence and in a respectful, professional and caring manner that is sensitive to the diversity of needs and vulnerabilities**

**Sources:** [CRPD](#) 22(2); [PBPPDLA](#) X; [CPT/Inf](#) (2009) 27 §92

**Tips for monitors:**

- Are medical examinations conducted in private and is confidentiality observed?
- Are consultations conducted by a doctor of the same gender, if so requested?
- Are interpreters readily available?
- Is there any detaining authority present during medical examination?
- Are detainees' medical files kept under lock and non-accessible to non-medical staff?

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**⑥ The provision of healthcare to immigration detainees is not compromised or unduly restricted by security measures or procedures**

**Sources:** [UNHCR-DG 8](#); [CoE-TGFR 16](#)

**Tips for monitors:**

- Can isolated detainees have access to medical examination as requested?
- Do transfers of detainees from one place of detention to another impact on access to health care?

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**⑦ Medication is readily available as prescribed or required, appropriately and securely stored, and discarded if beyond its expiry date**

**Sources:** [CoE-TGFR 9.4](#); [SMR 22\(2\)](#); [RPJDL 55](#); [PBPPDLA X](#)

**Tips for monitors:**

- What type of medication is most prescribed? For what reasons? Are there signs of overmedication?
- Who is distributing medication?
- Have there been any instances of shortage?
- Who is managing the stock of medication?

- 
- 8 There is a protocol, in line with international guidelines, for clinical management and care of detainees who refuse food and/or fluids and for the recovery and psychological care of those who have ceased hunger strikes**

**Sources:** [PME 1](#); [DOM](#); [DOT](#)

**Tips for monitors:**

- Does a specific protocol on hunger strikes exist? If so is it in line with international guidelines?
- Are detainees' informed choices respected together with their human dignity and is forced-feeding prohibited (provided concerned detainees are 'in full knowledge of the possible consequences of fasting on health and life')?
- Are clinical safeguards respected, including confirmation of a detainee's capacity to understand the consequences of his/her voluntary refusal of nourishment by at least one other independent physician?
- Do medical staff have complete clinical independence in deciding upon the care of a person on hunger strike?

- 
- 9 There are regular reviews of the social, physical and medical vulnerabilities of detainees**

**Sources:** [BR 6](#)

**Tips for monitors:**

- Are special conditions and care available for elderly detainees?
- Is there an age above which detainees are released?

### 4.6.2 Medical Staff

Medical staff plays multiple roles in the context of immigration detention. In the first instance, they assess the health status of detainees and provide any medical treatment and care they may need, including in the event that they suffer ill-treatment of one kind or another. Second, they have a role as adviser to the management of the place of detention on the adequacy of conditions, including food, sanitation and hygiene, accommodation, and exercise. Finally, they may have a role in medical assessments of individuals who may have suffered past ill-treatment, and may provide support for their protection or immigration application or for their application for release from detention. While these multiple roles are not inherently in conflict with one another, there is always a risk that they will give rise to political, ethical and clinical dilemmas, challenges and pressures. As such, medical staff working in the context of immigration detention needs to be assured of complete clinical independence and to be well supported by their professional body.

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#### ① Medical service is appropriately staffed to provide adequate care of the mental and physical health of detainees

**Sources:** [SMR](#) 22(1); [PBPPDLA](#) X; [CPT/Inf](#) (2009) 27 §91; [UNHCR-DG](#) 8 (vi); [EPR](#) 41.1

#### **Tips for monitors:**

- How many physicians/nurses are present daily, overnight, during weekends?
- What is the ratio of medical staff to detainees? Is it adequate?
- Does a medical officer have primary responsibility for ensuring adequate health care? What are his/her main duties?
- Have there been any delays in the provision of medical treatment?

- 
- ② A medical officer regularly inspects and reports to the director on the adequacy of: food; sanitation, hygiene and cleanliness; heating, lighting and ventilation; adequacy of clothing and bedding; physical education and sporting activities**

**Sources:** [SMR](#) 25(2), 26(1); [RPJDL](#) 73; [EPR](#) 43.3; 44

**Tips for monitors:**

- Does a medical officer inspect the place? If so, how regularly?

- 
- ③ Where demand for medical attendance exceeds the facility's capacity to provide it, there is an effective and efficient system of referrals to other medical practitioners, including civilian hospitals and external specialist care as appropriate**

**Sources:** [SMR](#) 22(2); [PBPPDLA](#) X

**Tips for monitors:**

- What is the referral system in place to ensure health care in periods of high demand?
- In case of external referral, are interpreters available?
- What is the process in place for specialist medical care, such as dental care or gynaecology?
- Is there a roster of medical practitioners available?

- 
- ④ Medical personnel are suitably trained and experienced in recognizing and treating the care needs of persons in situation of vulnerability**

**Sources:** [PBPPDLA](#) X; [EPR](#) 41.4

**Tips for monitors:**

- Have the medical personnel received special training to deal with persons in situations of vulnerability?

---

## 5 There is a medical officer on call after hours for emergency treatment

Sources: [PBPPDLA](#) X; [EPR](#) 41.2

### Tips for monitors:

- What is the system in place in case of emergency?
- What system is in place to ensure access to medical files in case of emergency, while respecting confidentiality?

---

## 6 Medical personnel are guaranteed complete clinical independence in the treatment and care of detainees

Sources: [RPJDL](#) 53; [PBPPDLA](#) IX(3), X; [DOT](#) 5

### Tips for monitors:

- Which authority is the health service placed under? Whom do the medical personnel report to?
- Do medical practitioners have autonomy in making medical decisions and recommendations?
- Is there evidence of breach of the normal code of confidentiality?

### 4.6.3 Special Needs of Women and Babies

In the context of immigration detention, there are often an unusually high number of women and children in detention, including pregnant women and women with infants. Women's health issues and the care and treatment of pregnant women, nursing mothers and their babies are therefore highly relevant aspects of detention for the monitoring team to examine. Specialist care will need to be well informed about the cultural and religious backgrounds of women and babies in detention, as well as any torture or trauma they may have suffered, including sexual and gender-based violence<sup>75</sup> and exploitation prior to or while in custody. In this regard, women who have been caught up in conflict situations or who have fallen into or placed themselves in the hands of people traffickers or smugglers are to be regarded as particularly at

risk. Female-headed family units may be particularly vulnerable, and medical staff ought also to be attuned to the risk of domestic violence, which may be exacerbated by the detention experience.

---

**① If women are detained, an onsite medical officer has specialist knowledge and experience in women's health issues and pre-natal and post-natal care and treatment is readily available**

**Sources:** [CEDAW](#) 12; [SMR](#) 23(1); [BR](#) 10; [PBPPDLA](#) I; [EPR](#) 89; [EU-RD](#) 21; [UNHCR-DG](#) 9.3

**Tips for monitors:**

- Are any specialist(s) part of the medical team? How many?
- Are there any specialists in maternal and child health care? How many?
- Are there any gynaecologists available? How many?
- Are gender-specific health care services at least equivalent to those available to women in the community?
- Are women and their babies healthy?

---

**② If pregnant women are detained, their babies are, as far as practicable, born in a hospital outside the place of detention**

**Sources:** [SMR](#) 23(1); [EPR](#) 34.3

**Tips for monitors:**

- What has been the location of any births (place of detention, hospital)?
- If a baby is born in detention, is this recorded on the child's birth certificate?



- 
- ③ If babies and their mothers are detained, an onsite medical officer has specialist knowledge and experience in paediatrics and maternal and child health care**

**Sources:** [CRC](#) 24(2)(d); [PBPPDLA](#) X

**Tips for monitors:**

- Are paediatricians available?
- How many? Is the ratio adequate?

- 
- ④ Preventive health screening and care is available to women and children in immigration detention at the same level as is available to women and children in the host community**

**Sources:** [BR](#) 17-18; [PBPPDLA](#) X

**Tips for monitors:**

- What specific preventive health screening is in place for women detainees, including screening for FGM?
- Is there an immunization programme?

- 
- ⑤ Medical practitioners are specially trained to identify vulnerabilities in the population of women detainees, taking into account their cultural and religious backgrounds**

**Sources:** [UNHCR-DG](#) 9.3; [PBPPDLA](#) X; [BR](#) 6-18

**Tips for monitors:**

- Are medical practitioners sensitized to the needs of women faced with gender based violence, including trafficked women or girls?

#### 4.6.4 Persons with mental health issues

Apart from women and children, other persons in detention also have specific health needs, especially persons suffering from torture or trauma, or mental illness/disability.

This attention ought to be provided at the time of the initial health screening to ensure immediate measures (including alternatives to detention) are taken, but also regularly through the detention review process.

This section is to be read in conjunction with 4.8 Persons in Situations of Vulnerability/Risk.

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**① The health screening includes an examination of the mental health status of the detainee and is integrated with the assessment of other social, physical and medical vulnerabilities**

**Sources:** [CRPD](#) 25; [BPP](#) 24-26; [SMR](#) 24; [RPJDL](#) 50; [BR](#) 6(b); [PBPPDLA](#) IX(3); [EU-RD](#) 22; [CPT/Inf](#) (2009) 27 §90

**Tips for monitors:**

- Does the medical screening include mental health assessment?
- How many detainees present mental health issues (age, history, reasons)?
- Have there been any medical reports on the adverse health effects of continuing detention in individual cases?
- Have medical practitioners made recommendations for release on mental health grounds (number, institutional response, response of judicial or other independent review body)?
- How widespread is the use of alternatives to detention on mental health grounds (in principle, in practice, numbers, and conditions of release)?

---

**② Detainees have access to specialized mental health treatment if required, and in specialized institutions or civilian hospitals, as appropriate**

**Sources:** [SMR](#) 22(1), (2), 82-83; [RPJDL](#) 53; [PBPPDLA](#) III(3); [EPR](#) 47

**Tips for monitors:**

- What type of specialized mental health care is available in the place of detention? On referral?
- Is there any evidence of misuse of non-prescription medication? How is this addressed?
- How widespread is the use of anti-depressants, sedatives, sleeping pills and psychotropic medication? How often are prescriptions reviewed?

---

**③ Initial health screening of immigration detainees is attuned and sensitive to the possibility that a detainee may have been a victim of torture or trauma**

**Sources:** [SMR](#) 24; [BR](#) 6(e); [PBPPDLA](#) IX(3); [CPT/Inf](#) (2009) 27 §90

**Tips for monitors:**

- Do staff receive any training on effective investigation and documentation of torture and ill treatment (Istanbul Protocol)?<sup>76</sup>
- Is any psychosocial assistance provided to victims of torture or trauma?

## 4.7 PERSONNEL / STAFFING

The type of institution responsible for managing the place of detention (e.g. police, border police, prison staff, private contractor, immigration service) will influence the overall institutional culture<sup>77</sup> and the general atmosphere.

The staff responsible for immigration detention have a challenging task of dealing with detainees who might not understand the reasons for their detention, combined with communication difficulties. It is therefore important that monitors do not overlook the staff, whatever their role, since their qualifications, training, aptitude and attitude are some of the key determinants of how detainees will be treated. In addition, if personnel are overworked, underpaid and/or underrated this can have a detrimental effect on the detention environment.

Monitors need to remember that detention conditions are also the staff working conditions. Staff and management have not been deprived of their liberty, but they may be stressed and anxious, may witness distressing incidents, and may even have been victims of aggressive or violent behaviour. Staff may, of course, have perpetrated or acquiesced in acts of intimidation, ill-treatment or neglect. They may enjoy their work, or they may find it unrewarding, underpaid and even depressing. Whatever the case, there is no doubt that the well-being of the staff and management working in places of detention is not only important in and of itself, but also has a direct bearing on the sense of well-being and safety of the detainees. As such, their views on the functioning of the place of detention and improvements they consider necessary, are highly relevant. Staff may also be an important source of information regarding the treatment of detainees.

Generally speaking, members of staff serve two functions: maintaining safety and security, and delivery of services. Depending on the size and nature of the place of detention, these functions may or may not be carried out by different staff groups. Information about both functions will be relevant to the monitoring team. Monitors can anticipate that

some members of staff may be more reticent than others, and may view the monitoring team as intrusive. Nevertheless, it is important that the team perseveres. The demeanour and receptiveness of staff to scrutiny may tell a story in itself, pointing to the culture of the detention environment. It is important to remember that members of staff are integral to the daily life of detainees.

#### **4.7.1 Staff–Detainee Relationships and Security**

It is difficult to overstate the importance of good staff–detainee relations in a closed detention environment. Where detainees feel that staff and management respect their humanity and dignity, including the uncertainty of their situation and their cultural, ethnic and religious backgrounds, this is likely to impact positively on their sense of well-being. Because positive relationships act as the basis for dynamic security, detainees are more likely to take responsibility for their own actions and decisions and to cooperate with staff and management. In turn, if the staff and management feel respected as people, not just on account of their power and authority, this is also likely to have a positive effect on their well-being and be more conducive to a healthy working environment.

Working in places of immigration detention can be extremely demanding and sometimes deeply affecting, especially in cases where detainees are in a highly distressed state or engaging in acts of protest or self-harm, or experience some other unanticipated crisis incident. All staff need to have received training in crisis management strategies. They ought also to be offered, and in some circumstances required to undergo, periodic debriefings with suitably qualified personnel, both individually and as a group.

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**① Relations between staff/officials and detainees are polite, courteous and respectful at all times**

**Sources:** [ICCPR](#) 10(1); [CMW](#) 17(1); [CRC](#) 37(c); [ACHR](#) 5(1); [ACHRP](#) 5; [PBPPDLA](#) I, XX

**Tips for monitors:**

- What is the general atmosphere between staff and detainees?
- Is positive interaction between staff and detainees encouraged by management and the central authorities?
- Do staff participate in recreational, sporting or cultural activities with detainees?
- Are detainees addressed by their preferred name? Do staff treat detainee accommodation as detainees' private space?

---

**② Staff carry out their duties thoughtfully, handle private and/or confidential information in their possession sensitively and respectfully, and understand that they have a duty of care for all detainees**

**Sources:** [CRPD](#) 22(2); [CCLEO](#) 4; [PBPPDLA](#) XX; [EPR](#) 72

**Tips for monitors:**

- What are the team's observations of the demeanour and behaviour of staff?
- Is there any evidence of inappropriate staff–detainee relationships (e.g. sexual exploitation, corruption, manipulative or abusive behaviour)?
- Do staff have the respect of detainees because of the way in which they conduct themselves?

- ③ **The elements of dynamic security are in place, such that: relationships (staff–detainee, staff–staff and detainee–detainee) are positive; local community–detainee relationships are positive; there is constructive activity to occupy detainees; detainees are well prepared for release, transfer or removal**

**Sources:** [ICCPR](#) 10(1); [EPR](#) 73; 74; 75

**Tips for monitors:**

- Do detainees feel safe and secure (during the day, at night, in all places)?
- Are staff–detainee relations cultivated by staff and/or management? If so, how? Is it effective?
- Are there visiting programmes for local communities?
- Are detainees purposefully occupied?

- ④ **Measures taken to ensure or maintain ‘security and good order’ are carefully documented, with reasons, in a security register**

**Sources:** [BPP](#) 18(3), 25, 29(2); [PBPPDLA](#) XXII

**Tips for monitors:**

- Does a security register exist? How is it maintained?
- Is the security register up to date?

### 4.7.2 Staff Recruitment, Training and Conduct

A cornerstone of a humane immigration detention scheme is that staff are properly recruited and trained. In this connection, immigration officers, enforcement personnel, medical personnel, and any other persons involved in the custody or treatment of immigration detainees, including private contractors, need to receive appropriate and on-going instruction, training, supervision and support.

Staff need to adopt an attitude in their relations with detainees that is appropriate and respectful. Staff ought to be drawn from a range of professional backgrounds and experience, in particular those with community-based experience of working with people from diverse cultural or religious backgrounds.

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#### ① Staff are carefully selected and recruited for their integrity, humanity, professional capacity and personal suitability for working in immigration detention

**Sources:** [SMR](#) 46(1), 47; [RPJDL](#) 82; [PBPPDLA](#) XX; [CPT/Inf](#) (97) 10 §29; [EPR](#) 76; 77

##### **Tips for monitors:**

- What are the requirements for recruiting staff in contact with detainees?
- Are professional qualifications, experience and character attributes taken into account in the recruitment process?

---

#### ② Staff are recruited from diverse professional backgrounds and appropriate linguistic backgrounds

**Sources:** [SMR](#) 49, 51(1); [EPR](#) 87.2

##### **Tips for monitors:**

- What is the ratio of staff coming from the prison environment?



- What is the ratio of social workers among the staff? How many staff members speak a language relevant for the detainee population?
- How many staff members are from the same cultural or religious backgrounds as detainees?
- Are cultural mediators, social workers, interpreters, psychologists etc. present?

### ③ The gender ratio of staff is appropriate to the detainee cohort

**Sources:** [BPP](#) 5(2); [RPJDL](#) 83; [SMR](#) 53; [PBPPDLA](#) XX; [EPR](#) 85

#### **Tips for monitors:**

- Are staff–detainee ratios appropriate to ensure safety and security?
- What is the ratio of men to women amongst staff?
- Are there women in senior management positions?

### ④ Staff are trained in and demonstrate understanding of diversity issues, including social, cultural, linguistic and religious diversity, and special needs of persons in situation of vulnerability

**Sources:** [CCLEO](#) 2; [BPP](#) 5 [BPP](#) 33; [SMR](#) 47(2); [RPJDL](#) 83, 85; [UNHCR-DG](#) 8; [PBPPDLA](#) XX; [CPT/Inf](#) (97) 10 §29; [EPR](#) 81

#### **Tips for monitors:**

- Do staff have good interpersonal and communication skills?
- Is this highly valued by management, staff and detainees?
- Are staff trained in cultural awareness, religious tolerance and sensitivity?
- Are staff aware of and sensitive to the needs of children, women, LGBTI people and the elderly?
- Are staff trained to recognize possible symptoms of stress reactions displayed by detainees (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action?

---

**5 There are clear lines of accountability and reporting structures for staff that ensure they perform their duties in a manner that respects the rights and dignity of detainees**

**Sources:** [SMR](#) 48; [RPJDL](#) 87; [PBPPDLA](#) XXIV; [EPR](#) 83, 84

**Tips for monitors:**

- Is there a code of conduct for staff, and are staff aware of the code of conduct?
- Are staff disciplinary and accountability measures adequate and effective?
- Is inappropriate language and conduct addressed?

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**6 The professional capacities of staff are acknowledged and respected, working hours are reasonable, and remuneration adequate**

**Sources:** [SMR](#) 46(3); [RPJDL](#) 83; [EPR](#) 78, 79

**Tips for monitors:**

- Are staff pay scales adequate?
- Is their employment secure?
- Do they have access to professional development and career advancement opportunities?
- Are working conditions acceptable (rotation, breaks, recreational leave, medical leave)?

---

**7 Staff have ready and free access to debriefing and counselling services**

**Sources:** [BPUFF](#) 21

**Tips for monitors:**

- Are staff adequately supported and supervised on the job?
- Is debriefing and counselling accessible and encouraged?

## 4.8 PERSONS IN SITUATIONS OF VULNERABILITY/ RISK

Every person who is deprived of his/her liberty is vulnerable or at risk. But some immigration detainees are particularly vulnerable and specific measures have to be taken by authorities to address their special needs. The degree of risk in the detention context is notably affected by the detention environment itself,<sup>78</sup> as well as a number of personal characteristics including: age, sex/gender, educational level, language, psychological and physical health status, sexual orientation or gender identity, social isolation and individual resilience or protective factors of the detainee.

Monitoring bodies have a critical role to play in:

- Highlighting government policies or practices of detaining particularly vulnerable asylum-seekers and migrants who ought not to be detained;
- Ensuring that particularly vulnerable individuals benefit from adequate assistance and protection; and
- Drawing the authorities' attention to the specific needs of those with particular vulnerabilities.

### 4.8.1 Basic Principles

Ensuring that detention is necessary and proportionate involves taking into account the special circumstances and needs of each individual in placement decisions (UNHCR-DG 4). A screening and assessment process can be used by decision-makers to identify persons in situations of vulnerability and to identify appropriate alternatives to detention. When detention is necessary as a last resort, the screening and assessment process can also assist to ensure detention conditions are appropriate to their particular circumstances.

---

**① Detention of persons in situations of vulnerability is exceptional and only used as a last resort, following an active consideration of alternatives to detention/release**

**Sources:** [SRHRM](#) §43; [UNHCR-DG](#) 4, 9

**Tips for monitors:**

- Are there screening and assessment processes to identify vulnerable detainees?
- Are there vulnerable persons detained in the centre (number, age, gender, nationality, type of vulnerability)?
- Do decisions to detain vulnerable persons take into account individual needs and vulnerabilities and set out the exceptional circumstances that justify their detention?
- Do these decisions justify why no alternatives to detention were used?
- Are particularly vulnerable detainees prioritized for alternatives to detention/release?

---

**② The detention centre has an active policy of equality and non-discrimination**

**Sources:** [CEDAW](#) 2; [CERD](#) 7; [CRPD](#) 4, 5; [BR](#) 31

**Tips for monitors:**

- Does the centre have an equality and non-discrimination policy in place that outlines how the needs of vulnerable groups will be recognized and addressed?
- Are staff aware of this policy? Is it properly implemented?
- Is there an assessment undertaken upon arrival at the detention centre, to identify vulnerabilities and how to meet specific needs of vulnerable detainees?
- When an assessment is conducted, how is it done in practice? Are detainees provided with a guarantee that the information will be treated confidentially?
- Are records kept of vulnerabilities and specific needs?

### ③ Staff are trained in equality, non-discrimination and how to meet the needs of persons in situations of vulnerability

Sources: [CCLEO](#) 2; [CEDAW](#) 2; [CERD](#) 6, 7; [CRPD](#) 4, 5; [SMR](#) 47; [EPR](#) 81.3

#### Tips for monitors:

- Are staff trained in equality and non-discrimination?
- Do they have a clear understanding of how to meet the needs of different groups/individuals in situation of vulnerability?

### ④ Detainees are able to complain about any incident of discrimination or abuse. (See also 4.1.6)

Sources: [BPP](#) 33; [SMR](#) 36; [BR](#) 25; [EPR](#) 70

#### Tips for monitors:

- Are detainees able to make a confidential complaint about any discriminatory treatment or behaviour in their own language, to detaining authorities, independent bodies and judicial authorities?
- Are detainees who complain provided with immediate protection, support and counselling where appropriate? Do protection measures take into account the possibility of retaliation?
- Are complaints dealt with promptly and replied to without undue delay?

## 4.8.2 Children<sup>79</sup>

The Convention on the Rights of the Child (CRC) provides the fundamental guiding principle that ‘in all actions concerning children, the best interests of the child shall be a primary consideration’ (CRC 3). There is global recognition that, in principle, asylum-seekers and migrant children ought not to be detained at all and, in any event, may only be detained as a measure of last resort, and for the ‘shortest appropriate period of time’ (CRC 37 (b)).<sup>80</sup> Guidance from the Committee on the Rights of the Child is also emerging that children ought *never* to be subject to punitive measures based upon their own or their parents’ migration status and that any immigration detention of a child

contravenes the principle of the best interests of the child and will constitute a child rights violation. In the event that children are held in immigration detention facilities, monitors need to be especially vigilant. Any detained children will be owed particular obligations because of their status and distinctive needs as children. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (RPJDL) provide important guidelines that focus on the rights and needs of children in detention.

In practice, detention of children in the context of immigration remains a reality which raises a number of issues in terms of protection of physical and mental integrity, as well as in relation to family links, education and social (re)integration. There is strong evidence that detention has a profound and negative impact on child health and development, regardless of the conditions in which children are held. Even very short periods of detention can undermine children's psychological and physical well-being and compromise their cognitive development. Children held in detention are at risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder (PTSD) such as insomnia, nightmares and bed-wetting. Feelings of hopelessness and frustration can manifest as acts of violence against themselves or others. Reports on the effects of immigration detention on children have found excess rates of suicide, suicide attempts and self-harm, mental disorder and developmental problems, including severe attachment disorder.

### ① Children are, in principle, not detained. When they are detained, this is only as a measure of last resort and for the shortest possible period of time

**Sources:** [CRC](#) 37(b); [RPJDL](#) 1, 2; [UNHCR-DG](#) 9.2; [CPT/Inf](#) (2009) 27 §97

#### **Tips for monitors:**

- What is the State's policy on detention of children?
- Are any children detained in the facility?
- How long have they been detained for? What is the average length?
- How often is the detention of children reviewed?
- What type of alternatives to detention were considered in the particular case?
- What measures are taken to ensure detention is for the shortest possible period of time (e.g. accelerating immigration claims)?
- Do external child agencies have access to children in detention?

### ② All decisions are taken in the best interest of the child

**Sources:** [CRC](#) 3; [UNHCR](#) 9.2; [EU-RD](#) 23(1); [EPR](#) 35, 36

#### **Tips for monitors:**

- How have children been impacted by detention?
- Are there any indications of negative effects? How are these addressed?
- Do children detained have access to education, recreation, leisure, social support and material assistance? Are children released temporarily (e.g. on daily basis) to participate in these activities?

### ③ Children are not separated from their parents against their will

**Sources:** [CRC](#) 9; [ICCPR](#) 23; [ICESCR](#) 10

#### **Tips for monitors:**

- Have any children been separated from their parents in detention?
- Is there a Best Interest process in place?<sup>81</sup>

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**④ Children are not detained because of the immigration status of their parents or guardians**

**Sources:** [CRC](#) 2; [SRHRM](#) §40

**Tips for monitors:**

- Are any children in detention because of the immigration status of their parents?
- Were alternatives to detention for the family actively considered?

---

**⑤ Children are never placed with adults in detention, unless they are members of the same family**

**Sources:** [CRC](#) 3; [RPJDL](#) 28, 29; [EPR](#) 35.4; [EU-RD](#) 23(5); [SMR](#) 8(d)

**Tips for monitors:**

- Are children housed with other adults (who are not members of their family) in detention?

---

**⑥ Every child deprived of liberty is provided with prompt legal advice and the right to challenge detention**

**Sources:** [CRC](#) 37(d)

**Tips for monitors:**

- Do children have legal assistance with immigration and asylum proceedings and the ability to challenge detention before a court of law?

### **4.8.3 Unaccompanied or Separated Children**

Sometimes children will migrate or travel alone, or become separated from parents or caregivers in the course of migration or flight from persecution or other situations of conflict and violence. Children without parents or guardians are particularly vulnerable to sexual and economic exploitation, trafficking and abuse. The CRC provides that in addition to the rights afforded to all migrant children, unaccompanied children have special protection and assistance needs. The Committee on the Rights of the Child has clearly stated that they ought not, as



a general rule, to be detained (CRC-GC 6). Given the alternatives to detention, it is difficult to conceive of a situation in which the detention of an unaccompanied child would be justified (WGAD A/HRC/13/30).

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**① Unaccompanied or separated children are not, as a general rule, detained. Detention is not justified by the fact that they are unaccompanied or separated or on the basis of their migration status. They are not criminalized for irregular entry or presence**

**Sources:** [CRC-GC 6](#); [SRHRM](#) §40; UNHCR 9.2; [EU-RD](#) 24

**Tips for monitors:**

- Are there any unaccompanied or separated children in detention?
- Are there processes in place to assess the age of children whose age is disputed?
- How long have they been detained?
- What is the justification for their detention? What type of alternatives to detention were considered?
- Do decisions to detain justify why alternatives to detention were not used (e.g. guardianship arrangements, staying with adult relatives, alternative care or accommodation arrangements)?

---

**② All unaccompanied or separated children in detention are appointed guardians who oversee all decisions affecting them, in the best interests of the child**

**Sources:** [CRC](#) 18(2), 20(1); [CRC-GC](#) 6 p.11; [SRHRM](#) §41; [EU-RD](#) 24

**Tips for monitors:**

- Do unaccompanied or separated children have guardians appointed to them, who oversee that all decisions are being taken in their best interest?
- How often do unaccompanied or separated children have contact with guardians?
- Are guardians active in representing the best interests of the child?

---

**③ There is a process in place to reunite child refugees with their parents. (See section 4.5.1)**

**Sources:** [CRC](#) 22

**Tips for monitors:**

- Is the State taking steps to reunite unaccompanied or separated refugee children with their parents?

#### **4.8.4 Women**

Women in immigration detention have distinctive needs that need to be provided for. Although some categories of women, including pregnant women and nursing mothers, should not be detained at all, if they are exceptionally detained then special medical and other support are to be provided. Likewise, the gender-specific hygiene needs and related reproductive health matters of women need to be catered for. Measures to prevent sexual abuse and other forms of gender-based violence, and to respond to victims, must be ensured by the detaining authorities.

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**① The detention centre has clear policies and regulations to provide maximum protection for women detainees against sexual and gender-based violence, discrimination and abuse**

**Sources:** [CEDAW](#) 2; [BR](#) 31; [IACPPEVAW](#) 3, 4; [EPR](#) 34

**Tips for monitors:**

- Does the detention centre have clear policies and regulations to provide maximum protection for women detainees against sexual and gender-based violence, discrimination and abuse?
- Are staff aware of these?
- Are the policies properly implemented?

## ② Staff working with women detainees are trained on the specific needs of women detainees

Sources: [CEDAW](#) 2; [BR](#) 33; [IACPPEVAW](#) 7

### Tips for monitors:

- Do staff working with women detainees have a clear understanding of the specific needs of women detainees (including pregnant women and nursing mothers)?
- Are staff trained on this?

## ③ Women are separated from men in detention, except in case of families, as appropriate. Staff working with female detainees are female

Sources: [SMR](#) 8(a); [SRHRM](#) §36, 37

### Tips for monitors:

- Are women separated from men in detention?
- Is there separate accommodation for families?
- Are female staff assigned to work with female detainees?

## ④ Pregnant women and nursing mothers are not detained. Alternatives to detention are actively pursued

Sources: [BR](#) §9; [UNHCR-DG](#) 9.3

### Tips for monitors:

- Are there any pregnant women or nursing mothers in detention?
- What is the justification for their detention? Were alternatives to detention actively considered prior to the decision to detain them?

- 
- ⑤ Disciplinary sanctions for women detainees do not include a prohibition of family contact, especially with children. Punishment by confinement or disciplinary segregation is not applied to pregnant women, women with infants or breastfeeding mothers in detention**

**Sources:** [BR](#) 22, 23

**Tips for monitors:**

- Do disciplinary sanctions include a prohibition of family contact?
- Is segregation used as a punishment against pregnant women, women with infants or breastfeeding mothers?

- 
- ⑥ Accommodation for women has facilities and materials required to meet their specific hygiene needs and those of their children, if appropriate**

**Sources:** [BR](#) 5; [EPR](#) 19.7

**Tips for monitors:**

- Are sanitary towels provided free of charge?
- Is there a regular supply of clean water for the personal care of children and women, in particular women who are pregnant, breastfeeding or menstruating?

NB: Gender specific health care is included in Section 4.6.3.

### 4.8.5 Persons with Mental or Physical Disability

The detention for immigration purposes of people with a mental or physical disability is all too frequent, and places of immigration detention often lack the resources to provide every person with adequate medical attention and care (SRHRM §46). Immigration detention exacerbates existing mental and physical health issues and may cause additional widespread and serious damage to the mental and physical health of detainees.<sup>82</sup> For this reason, persons who suffer from mental disability should never be detained. Instead, they should be observed and cared for in specialized institutions under medical management (SMR 82). In some cases, the continued immigration detention and failure to seek alternatives to detention for asylum-seekers and migrants with mental or physical disability may amount to torture and cruel, inhuman or degrading treatment or punishment.<sup>83</sup> For persons with physical disabilities, their circumstances need to be reasonably accommodated.

- 
- ① The existence of a disability shall in no case justify a deprivation of liberty. Persons who suffer from mental disability are, in principle, not detained and have access to alternatives to detention in the community, as appropriate**

**Sources:** [CRPD](#) 14, 19; [BR](#) 60; [PBPPDLA](#) III(III); [UNHCR-DG](#) 9.5

**Tips for monitors:**

- Are there persons in detention facility with mental or physical disabilities? Any detainees with serious impairments?
- Is there any evidence that persons with disabilities have been deprived of their liberty on the basis of their disability (e.g. denied access to alternatives to detention due to inability to report to authorities)?
- Were alternatives to detention considered?

- 
- ② **Every detainee is assessed as soon as possible after admission to the detention facility and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures. The medical officer shall have the care of the physical and mental health of the prisoners**

**Sources:** [SMR](#) 24, 25

**Tips for monitors:**

- Are detainees with disabilities assessed as to their medical needs, and swiftly and systematically identified on arrival at the detention facility?
- Are clinical psychological or psychiatric services and assessments provided to determine mental illness amongst the detainee population?
- Are medical or health professionals available to diagnose health conditions or identify a disability and/or to recommend measures to accommodate their disability?

- 
- ③ **Persons with disabilities are treated in line with their human rights and without discrimination, including by provision of “reasonable accommodation”**

**Sources:** [CRPD](#) 6, 7, 14(3), 15-17, 18(1)(b); [BR](#) 1(b); [BPP](#) 5(2); [UNHCR-DG](#) 9.5

**Tips for monitors:**

- Does the detention centre have policies to ensure that the rights of people with disabilities are protected when in immigration detention?
- What adaptations have been made to accommodate the needs of persons with disabilities? Are these adequate/reasonable?

### 4.8.6 Trafficked Persons

While trafficked persons may enter a state or otherwise remain irregularly, as victims of exploitation they should not be held in immigration detention or other forms of custody.<sup>84</sup> Trafficked persons are, first and foremost, victims and are not to be detained, charged or prosecuted for the illegality of their entry or residence or for any involvement in unlawful activities which are a direct consequence of their situation as a trafficked person.<sup>85</sup> Instead, States are recommended to adopt legislation or other appropriate measures permitting trafficked persons to remain within the State temporarily or permanently (ATP 7, §1).

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#### ① Trafficked persons are not held in immigration detention. They are never held together with their traffickers.

Sources: [ATP 7\(1\) \(4\)](#); [OHCHR-TG](#); [SRTP](#) §95

##### Tips for monitors:

- Is there a process of assessing and identifying trafficked persons?
- Have any detainees been trafficked? In what circumstances were they trafficked?
- Do decisions to detain trafficked persons take into account their trafficking experience? Do decisions justify why alternatives to detention were not used (e.g. safe houses and proper care management)?
- Are measures (e.g. screening) in place to ensure that trafficked persons are not detained with their traffickers?

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#### ② Trafficked persons are provided with assistance and protection

Sources: [ATP 6\(3\)\(a\)](#); [OHCHR-TG](#) 8, 9

##### Tips for monitors:

- Do trafficked persons have access to legal counsel, procedures, social support and counselling?

## 4.8.7 Victims of Torture and Trauma

Victims of torture and other serious physical, psychological or sexual violence are already psychologically vulnerable due to the trauma they have experienced. Detention is likely to exacerbate their symptoms, requiring an ethic of care rather than detention. Victims of torture and trauma are regularly asylum-seekers and refugees. The detention of victims of torture may in itself amount to inhuman and degrading treatment (SRHRM §44). This section should be read together with 4.8.5.

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### ① Victims of torture, or other physical, psychological or sexual violence, are not in principle detained

**Sources:** [SRHRM §44](#); [UNHCR-DG 9.1](#)

**Tips for monitors:**

- Do decisions to detain take into account past histories of torture or trauma?
- Do decisions justify why alternatives to detention were not used for survivors of torture/trauma?

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### ② There is a protocol for handling instances where detainees disclose information about previous mistreatment, torture or trauma

**Sources:** [ICCPR 7](#); [UNCAT 2](#); [EU-RD 25](#)

**Tips for monitors:**

- Do case histories include comprehensive torture/trauma assessments?
- Do detainees have a torture/trauma care plan?
- Are past cases of ill-treatment transmitted to relevant authorities (if detainees request/consent)?
- What statistical data is available relating to those identified as having a history of torture and/or trauma?



### ③ Initial health screening of immigration detainees is attuned and sensitive to the possibility that the detainee may have been a victim of torture or trauma

**Sources:** [ICCPR](#) 10; [BPP](#) 24; [SMR](#) 24; [EU-RD](#) 25; [PBPPDLA](#) IX(3)

#### **Tips for monitors:**

- Are health professionals trained for dealing with survivors of torture and other trauma?
- Are medical registers available? Are specific cases written down in a separate register?

## 4.8.8 Stateless Persons

Because stateless persons do not generally benefit from the consular or diplomatic protection of a State, often do not possess identity documents or have a country to which to be returned, they are especially vulnerable to prolonged immigration detention. In fact most stateless persons reside in their countries of birth or habitual residence, and they should not therefore be seen as immigration cases.

### ① The inability to remove/deport stateless persons needs to be taken into account in decisions to detain. Indefinite detention is unlawful

**Sources:** [CSSP](#) 26, 27; [UNHCR-DG](#) 6; [SRHRM](#) §47

#### **Tips for monitors:**

- Are there any stateless persons in detention? How long have they been in detention? What is the average length of detention?
- What is the justification for their detention?
- Are there any cases of stateless people being held indefinitely because of absence of documentation or nationality? Do stateless persons in detention have access to statelessness determination procedures?

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## ② Stateless persons are treated in line with their human rights and without discrimination

**Sources:** [CSSP](#) 3, 5; [UNHCR-DG](#) §4; [SRHRM](#) §47

### **Tips for monitors:**

- Do stateless people benefit from the same standards in detention as other detainees? Are there indications of discriminatory treatment?

## 4.8.9 LGBTI Persons

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons have a heightened risk of being subjected to physical, psychological and/or sexual violence or abuse in detention, both by staff and other detainees.<sup>86</sup> They may have specific medical and counselling needs. Solitary confinement or administrative segregation, while often used by authorities, is not an appropriate way to ensure the safety of LGBTI detainees. If their safety cannot be ensured in detention, LGBTI detainees ought to be released without conditions or referred to alternatives to detention.

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## ① Staff are trained in non-discrimination and equality in relation to gender identity and sexual orientation, and sensitized to the particular needs of LGBTI persons

**Sources:** [ICCPR](#) 10(1); [YP](#) 9(g)<sup>87</sup>; [UNHCR-DG](#) 9.7

### **Tips for monitors:**

- Do staff have a clear understanding of the protection and care needs of LGBTI detainees?
- Are staff trained in equality and non-discrimination in relation to gender identity and sexual orientation?
- If there is a code of conduct or similar document covering sexual orientation and gender identity? Is discrimination on sexual orientation or gender identity sanctioned in the same way as other forms of discrimination?

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## ② LGBTI detainees have access to appropriate medical care and counselling tailored to their specific needs

Sources: [YP](#) 9(b)

### Tips for monitors:

- Do LGBTI detainees have access to appropriate medical care and counselling, including, for example, with regard to reproductive health, or access to HIV/AIDS information and medication?

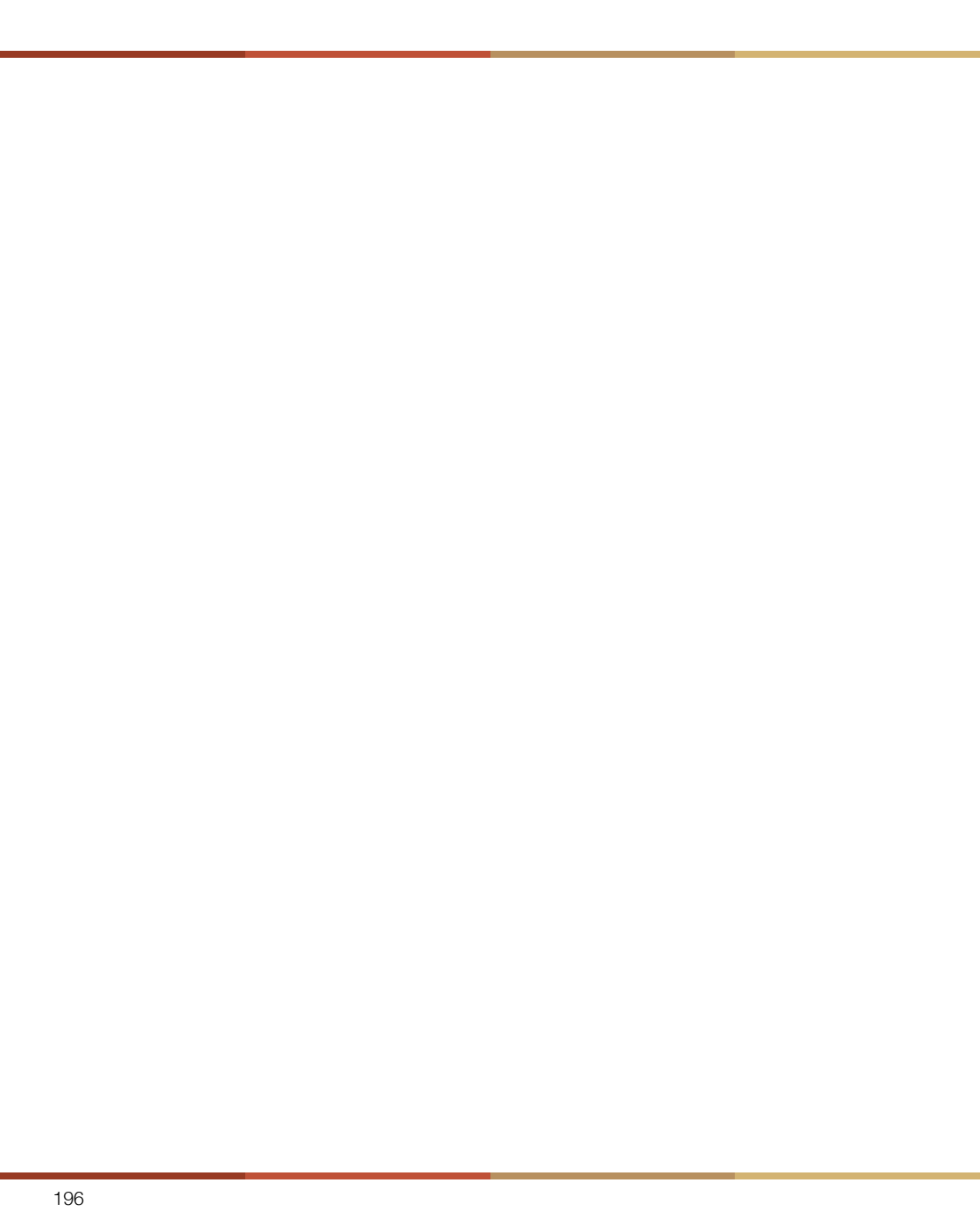
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## ③ Protective measures are in place to prevent violence or abuse against LGBTI persons

Sources: [ICCPR](#) 7; [YP](#) 9(d); [UNHCR-DG](#) 9.7

### Tips for monitors:

- Are there any instances of violence, physical, psychological or sexual abuse against LGBTI detainees?
- How does the detention centre ensure the safety and security of LGBTI detainees against violence and abuse?
- Is solitary confinement or administrative segregation ever used to ensure the safety of LGBTI detainees? How are such measures managed to ensure other rights are not undermined?
- What procedures are in place to take account of transgender preferences in relation to their placement?
- Are release without conditions and alternatives to detention available where the centre is not able to ensure their security?



# ENDNOTES

- <sup>1</sup> United Nations Human Rights Committee (CCPR), General Comment No. 15: *The Position of Aliens under the Covenant*, 11 April 1986, §5, available at: <http://goo.gl/oiMW1M> See, also, *Moustaquim v. Belgium* (1991), Council of Europe: European Court of Human Rights (ECtHR), App. No. 26/1989/186/246, §43, available at: <http://goo.gl/xl0gD7> and *Vilvarajah and Others v. the United Kingdom*, (1991), ECtHR, App. No. 45/1990/236/302-306, §103, available at: <http://goo.gl/wKOJJR>
- <sup>2</sup> For the purposes of this Manual, ‘asylum-seekers and migrants’ is used broadly to refer to the different categories of persons who move from one country, be it of origin or of habitual residence, to another. This concept would include both persons who move on account of protection needs, such as refugees and asylum-seekers and including the particular situation of stateless persons, and those who do so for economic or other non-protection related reasons.
- <sup>3</sup> Special categories would include refugees, asylum-seekers, stateless persons, pregnant women and nursing mothers, children (including unaccompanied or separated minors), people with physical or mental disabilities, victims of human trafficking, older people, LGBTI people, survivors of torture and/or trauma and other people with specific health needs. This is covered in more detail in Section 4.8.
- <sup>4</sup> See definition of *non-refoulement* in the glossary.
- <sup>5</sup> The OPCAT entered into force in June 2006. As of November 2013, it has 70 States Parties, and a further 21 signatories that are yet to ratify.
- <sup>6</sup> UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, available at: <http://www.refworld.org/docid/5268c9474.html>
- <sup>7</sup> ‘Special Procedures’ is the general name given to the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 36 thematic and 12 country mandates. The Office of the High Commissioner for Human Rights (OHCHR) provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates. Special procedures are either an individual (called ‘Special Rapporteur’ or ‘Independent Expert’) or a working group usually composed of five members (one from each region). The mandates of the special procedures are established and defined by the resolution creating them. Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial in order to be able to fulfil their functions in all impartiality.

- <sup>8</sup> In Europe, the European Ombudsman monitors the work of FRONTEX (see note 15 below).
- <sup>9</sup> The list excludes internal administrative bodies at the domestic level and focuses on the most relevant bodies in the context of immigration detention, totally independent from the detaining authorities.
- <sup>10</sup> See APT and Council of Europe (CoE), *‘Visiting Immigration Detention Centres: A Guide for Parliamentarians’*, September 2013, available online at: <http://goo.gl/pWE8Xy>
- <sup>11</sup> Immigration detention may be permissible when justified in the individual case by a legitimate purpose generally in line with international law, for example, in order to protect public order, public health or national security. See Section 2.6 for further information.
- <sup>12</sup> For example, immigration detention facilities that are in remote locations may be chosen to limit external scrutiny or may simply do so as a necessary corollary.
- <sup>13</sup> *‘The CPT is of the view that the prolonged detention of persons under aliens legislation, without a time limit and with unclear prospects for release, could easily be considered as amounting to inhuman treatment.’* (CPT Report to the Bulgarian Government, 2008 visit, CPT/Inf (2010) 29, §29).
- <sup>14</sup> UNHCR-DG 6.
- <sup>15</sup> For example, on 26 October 2004 the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) was created. FRONTEX promotes, coordinates and develops European border management. For more information see <http://goo.gl/mDLjtq>
- <sup>16</sup> See UNHCR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, §14, July 2011, available at: <http://goo.gl/XDKCEI>
- <sup>17</sup> UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, UN Doc A/HRC/17/31, 21 March 2011, available at: <http://goo.gl/iLHLU> See also *Mr. Carlos Cabal and Mr. Marco Pasini Bertran v. Australia*, HRC, Comm. No. 1020/2001, [7.2], available at: <http://goo.gl/6xvJuM>
- <sup>18</sup> See UNHCR, *Global Roundtable on Alternatives*, §14.
- <sup>19</sup> Article 9(1) and 12(1), ICCPR. See also Principle 2, BPP, and UNHCR-DG 3.
- <sup>20</sup> Article 9(1), ICCPR. See also UNHCR-DG 4.

- <sup>21</sup> SRHRM, §9. See also, UNHCR-DG 4.1
- <sup>22</sup> WGAD, A/HRC/7/4, §53.
- <sup>23</sup> The Working Group on Arbitrary Detention has noted that ‘there are concerns about the principle of proportionality when you consider that [immigration detainees] have not committed a crime’ yet may be subject to prison-like conditions for prolonged periods of time. WGAD, Statement upon the Conclusion of its Visit to Hungary (23 September – 2 October 2013), available at: <http://goo.gl/XRZgBU>
- <sup>24</sup> *Van Alphen v. The Netherlands*, HRC, Comm. No. 305/1988, 23 July 1990, [5.8], available at: <http://goo.gl/v7xcc2>; See also UNHCR-DG 4.
- <sup>25</sup> HRC, *General Comment No. 18: Non-discrimination*, 10 November 1989, [1]; HRC, *General Comment No. 15: The Position of Aliens under the Covenant*, 11 April 1986, [1].
- <sup>26</sup> *A v. Australia*, HRC, Comm. No. 560/1993, 30 April 1997, [9.4], available at: <http://goo.gl/49tvvu>; See UNHCR-DG 7.
- <sup>27</sup> Detention often forms part of removal and deportation processes. In some countries detention and removal practices are acknowledged to be within the remit of a comprehensive monitoring function. In others this aspect of detention may be neglected. Monitoring the treatment of those removed and deportees can be regarded as good practice.
- <sup>28</sup> The ability to contest the legality of one’s detention, alleged ill-treatment and detention conditions, is a fundamental and non-derogable right.
- <sup>29</sup> See Section 4.8.
- <sup>30</sup> It is also envisaged that this Manual will be used by NGOs and others whose access may be intermittent, discretionary or for a limited purpose.
- <sup>31</sup> Immigration detention has been linked to high levels of trauma, post-traumatic stress disorder, self-harm and suicidal ideation, particularly for children. Health professionals may be able to, for example: monitor the medical screening of immigration detainees upon arrival or before departure; interview detainees or review medical files to identify cases of people with a history of trauma, examining the medical aspects of a whole range of issues related to ill-treatment, such as conditions of custody (including a lack of food, water, heat, light, ventilation, sanitation or exercise); identify risks of suicide, self-harm and other mental health issues; identify signs of administrative segregation, disciplinary isolation, improper use of force and restraint, and mental health issues.
- <sup>32</sup> See Section 3.5.4 *Making Recommendations*.
- <sup>33</sup> See Section 3.2, *Developing a Monitoring Strategy: Key Elements*.

- <sup>34</sup> This is an area that needs to be approached with care depending on the context. One alternative is to obtain the name and position of the focal person responsible for the place to be visited.
- <sup>35</sup> This could include a list with basic information regarding nationality, sex, age, status including the date of arrival of detainees in the facility.
- <sup>36</sup> Note that immigration detainees who are deaf or blind may require the assistance of Braille or sign language interpretation. CRPD, Articles 21(b) and 30(4).
- <sup>37</sup> For example, UNHCR, NPMs, NGOs, lawyers who represent detainees, judges, medical practitioners, service providers working with or in the immigration centre (e.g. health, social and educational services), former detainees, family, friends or other regular visitors.
- <sup>38</sup> See Section 3.4.5, *Interviews with Detainees*, including how to manage detainees' expectations.
- <sup>39</sup> See Section 4.
- <sup>40</sup> Some facilities have particular dress codes such as requiring closed toe shoes or no heels.
- <sup>41</sup> A deeper and thorough analysis will be done by the team after the visit – see Section 3.5, *After the Visit*.
- <sup>42</sup> Internal rules displayed in detention centres are good reference check points to assess whether the practice is in line with official guidelines/legislation (e.g. how many meals are provided, curfew, visiting hours, outdoor exercise).
- <sup>43</sup> APT, Detention Monitoring Briefing Paper No. 4: *'Mitigating the Risks of Sanctions related to Detention Monitoring'*, 2012, <http://goo.gl/P00NJd>
- <sup>44</sup> With regard to places of detention holding very few people, it is important that monitors choose to interview either all the detainees or none. APT Detention Monitoring Briefing Paper No. 2: *'The Selection of Persons to Interview in the Context of Preventive Detention Monitoring'*, 2009 <http://goo.gl/D7gArD>
- <sup>45</sup> This can include detainees who have already contacted the monitoring organization or its partners prior to the visit via a complaints system.
- <sup>46</sup> See ICCPR 17; CMW 14; CRC 16; CRPD 22; ATP 6(1); OHCHR Trafficking Guidelines 3(7), 6(6), 8(9).
- <sup>47</sup> Some express concern as regards the use of recording devices during private interviews. It is generally difficult to establish trust with recording devices and they might have a negative effect by reminding detainees of police interviews they had attended in the past during which recording devices had been used. This is particularly valid for cameras and video-recorders, which can 'freeze' the human contact.



- <sup>48</sup> The issue of how monitors and interpreters can work together is discussed in depth in APT Detention Monitoring Briefing Paper, No.3: *'Using Interpreters in Detention Monitoring'*, available at: <http://goo.gl/DRiaPc>
- <sup>49</sup> In some countries, a telephone interpreter service is available. Although it may on occasion be necessary or even desirable to use such a service, it is usually preferable to have the interpreter physically present. If using a telephone interpreter service, the monitoring team should keep in mind risks and implications with regard to eavesdropping and confidentiality.
- <sup>50</sup> One tactic is to start with the positive observations and only then proceed to problems. This avoids giving authorities an impression of being always just criticized.
- <sup>51</sup> International standards, good practice and indicators of improvement or deterioration together enable a visiting body to follow systematically over time changes in the way in which detainees experience immigration detention in the places that it visits regularly.
- <sup>52</sup> UNHCR, for example, which has an operational role in over 120 countries, may need to weigh up concerns over other operational priorities, including the security of its staff, which may necessitate a confidential communication/report of the visit from UNHCR to the authorities.
- <sup>53</sup> For example, under the OPCAT, NPMs are expressly requested to present an annual report, and the State Party is required to publish and disseminate it.
- <sup>54</sup> Sometimes, monitors will be compelled to recommend that a particular place of detention be closed down. If necessary they must do so, but they would first need to ask themselves whether it is the place of detention that is the problem, or whether the problem is more broadly systemic in character.
- <sup>55</sup> See APT Detention Monitoring Briefing Paper, No.1: *'Making Effective Recommendations'*, available at: <http://goo.gl/uOWtW1>
- <sup>56</sup> OPCAT, Article 19(c)
- <sup>57</sup> Interventions at the regional level would also be appropriate where existing human rights mechanisms are available, for example in the Americas and Europe.
- <sup>58</sup> Article 21, UNCAT; Article 1, First Optional Protocol to the ICCPR. [Optional Protocol to the International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 59, UN Doc. A/6316 (1966), 999 UNTS 302, *entered into force* March 23, 1976.] An individual or group complaint could also be sent to the United Nations WGAD.
- <sup>59</sup> Regionally, see African Court on Human and Peoples' Rights, European Court of Human Rights, Inter-American Court of Human Rights.

- <sup>60</sup> Hard law refers to treaties and conventions. Soft law refers inter alia to non-binding standards such as declarations, resolutions or guidelines of authoritative bodies, reports of Special Rapporteurs or advisory opinions.
- <sup>61</sup> In the case of refugees and asylum-seekers, the authorities must not inform or provide their information to the individual's country of origin or habitual residence. Asylum-seekers and refugees are to be protected against visits from the consular authorities of their country of origin or habitual residence.
- <sup>62</sup> The term 'body searches' covers three different types of searches: pat-down or frisk searches; strip searches; body cavity searches. See APT and Penal Reform International (PRI) Factsheet on '*Body Searches: Addressing Risk Factors to Prevent Torture and Ill-treatment*', 2013, available at: <http://goo.gl/Q3rT0s>
- <sup>63</sup> The terms 'removal' and 'deportation' are used interchangeably to qualify the process of being sent back/returned to the country of origin or habitual residence. 'Repatriation' refers to return that is not physically coerced, even if it is not voluntary.
- <sup>64</sup> See APT briefing paper on '*NPMs: Monitoring the Forced Deportation Flights of Migrants*', 2012, available at: <http://goo.gl/qyUyzw>
- <sup>65</sup> According to the CPT: '*removal orders should be issued in each and every case based on a decision following national laws and procedures, and in accordance with international human rights obligations. The removal order should be handed out in writing to the person concerned.*' [CPT/Inf (2009) 27 §95].
- <sup>66</sup> '*The CPT considers that the administration of medication to persons subject to a deportation order must always be carried out on the basis of a medical decision taken in respect of each particular case. Save for clearly and strictly defined exceptional circumstances, medication should only be administered with the informed consent of the person concerned.*' (CPT/Inf (2003) 35 §40). As regards the presence of a medical doctor: '*[T]he presence on board of removal charter flights of a medical doctor (instead of a paramedic or a nurse) would be highly desirable.*' (CPT report to the Government of the United Kingdom, October 2012 visit, CPT/Inf (2013) 14 §28).
- <sup>67</sup> As regards documentation of deportation operations the CPT states that '*Deportation operations must be carefully documented. The establishment of a comprehensive file and a deportation record, to be kept for all operations carried out by the units concerned, is a basic requirement. (...) The information recorded should cover every incident and every use of means of restraint (...).*' (CPT/Inf (2003) 35 §44).

<sup>68</sup> In the CPT's view, *'it is entirely unacceptable for persons subject to a deportation order to be physically assaulted as a form of persuasion to board a means of transport or as a punishment for not having done so.'* (CPT/Inf (2003) 35 §32). *'[T]he force and the means of restraint used should be no more than is reasonably necessary.'* (CPT/Inf (2003) 35 §33). *'The use of control and restraint techniques by escorts during transfer should be justified in each individual case by a risk assessment.'* (CPT/Inf (2013) 14 §17). *'The CPT has made it clear that the use of force and/or means of restraint capable of causing positional asphyxia should be avoided whenever possible and that any such use in exceptional circumstances must be subject of guidelines designed to reduce to a minimum the risks to the health of the persons concerned.'* (CPT/Inf (2003) 35 §34). *'In addition (...), the CPT has systematically recommended an absolute ban on the use of means likely to obstruct the airways (nose and/or mouth) partially or wholly.'* (CPT/Inf (2003) 35 §36). *'[I]n the event of a flight emergency while the plane is airborne, (...) it must be possible to remove immediately any means restricting the freedom of movement of the deportee upon an order from the crew'* (CPT/Inf (2003) 35 §37). *'In the CPT's opinion, security considerations can never serve to justify escort staff wearing masks during deportation operations.'* (CPT/Inf (2003) 35 §38).

<sup>69</sup> As regards selection and training of escort staff: *'The proper conduct of deportation operations depends to a large extent on the quality of the staff assigned to escort duties. Clearly, escort staff must be selected with the utmost care and receive appropriate, specific training designed to reduce the risk of ill-treatment to a minimum.'* (CPT/Inf (2003) 35 §42).

<sup>70</sup> 'Ill-treatment' is short for 'inhuman or degrading treatment or punishment'.

<sup>71</sup> The *Istanbul Statement on the Use and Effects of Solitary Confinement* (2007) defines it as the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day. Solitary confinement is also known as 'segregation', 'isolation', 'separation', 'cellular', 'lockdown', 'supermax', 'the hole', or 'secure housing unit', available at: <http://www.solitaryconfinement.org/istanbul>.

<sup>72</sup> The SR on Torture defines prolonged solitary confinement 'as any period of solitary confinement in excess of 15 days.' See Interim Report by the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, A/66/268, 5 August 2011, §26 (SR Torture).

<sup>73</sup> Including psychological support when appropriate.

- <sup>74</sup> See World Medical Association, Malta and Tokyo Declarations, both revised 2006: “Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner”. See also ICRC’s position on hunger strikes (FAQ): <http://goo.gl/9Nq2JE>
- <sup>75</sup> Such as female genital mutilation (FGM).
- <sup>76</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“Istanbul Protocol”), 2004, HR/P/PT/8/Rev.1, available at: <http://www.refworld.org/docid/4638aca62.html>
- <sup>77</sup> ‘Culture in places of detention’ means the shared assumptions and values of staff and detainees, which guide behaviour within the detaining organization. See APT and Penal Reform International, *‘Institutional Culture in Detention: A Framework for Preventive Monitoring’*, available at: <http://goo.gl/MnDgKt>
- <sup>78</sup> See, e.g. Jesuit Refugee Service, Europe: *Becoming Vulnerable in Detention*, June 2011, available at: <http://www.refworld.org/docid/4ec269f62.html>
- <sup>79</sup> Under international law, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier (CRC Article 1).
- <sup>80</sup> See also UNHCR, *EXCOM Conclusion on Children at Risk*, 5 October 2007, No. 107 (LVIII) - 2007, available at: <http://www.refworld.org/docid/471897232.html>
- <sup>81</sup> See, UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2008, available at: <http://www.refworld.org/docid/48480c342.html> See also, UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines*, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html>
- <sup>82</sup> See IDC, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, 2011.
- <sup>83</sup> In communication *C. v. Australia*, No. 900/1999, the Human Rights Committee (CCPR) held that the continued detention of a migrant when the State was aware of his mental condition and failed to take the steps necessary to ameliorate his mental deterioration constituted a violation of his rights under Article 7 of the Covenant (the prohibition of torture and cruel, inhuman or degrading treatment or punishment) (§8.4).
- <sup>84</sup> The Recommended Principles and Guidelines on Human Rights and Human Trafficking, see in the reference section.

- <sup>85</sup> *Ibid.*, see also *The Special Rapporteur on Trafficking in Persons, Especially Women and Children*, A/64/290, in Annex II: Selected Reference Materials.
- <sup>86</sup> APT and Penal Reform International, *LGBTI Persons Deprived of their Liberty: a Framework for Preventive Monitoring*, 2013 available at <http://goo.gl/46nGq1>
- <sup>87</sup> The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. They were developed and unanimously adopted in 2007 by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others. See <http://www.yogyakartaprinciples.org>
- <sup>88</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Master Glossary of Terms*, June 2006, Rev.1, available at: <http://www.refworld.org/docid/42ce7d444.html>
- <sup>89</sup> See, UNHCR, *Note on the Mandate of the High Commissioner for Refugees and his Office*, October 2013, available at: <http://www.refworld.org/docid/5268c9474.html>
- <sup>90</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Master Glossary of Terms*, June 2006, Rev.1, available at: <http://www.refworld.org/docid/42ce7d444.html>
- <sup>91</sup> See Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L 337, §9-26, available at: <http://www.refworld.org/docid/4f197df02.html>



# ANNEXES

## ANNEX I: GLOSSARY OF KEY TERMS

**Accelerated asylum procedures:** special procedures for dealing in an expeditious manner with asylum applications that are so obviously without foundation as not to merit a full examination at every level of the procedure. Such applications have been termed either ‘clearly abusive’ or ‘manifestly unfounded’ and are to be defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the Refugee Convention or to any other criteria justifying the grant of asylum. However, compelling protection reasons may also be a basis for processing a claim on a priority basis through an accelerated procedure, for example in cases which are clearly well-founded, allowing a swift positive decision on the asylum application.

**Administrative detention:** arrest and detention without charge or trial ordered by the administrative authorities rather than judicial bodies/courts. In many countries, violations of the immigration law lead to administrative detention.

**Alternatives to detention:** is not a legal term but is used as shorthand to refer to *‘any legislation, policy or practice that allows asylum-seekers, refugees and migrants to reside in the community subject to a number of conditions or restrictions on their freedom of movement.’* (See UNHCR-DG §8) Alternatives to detention place less coercive or intrusive restrictions on liberty or freedom of movement than detention.

**Arbitrary detention:** for detention to be arbitrary it must have elements of *‘inappropriateness, injustice and lack of predictability.’* (See UNHCR-

DG 4, §18) To guard against arbitrariness, the detention needs to be necessary and proportionate for a legitimate purpose in each individual case.

**Asylum:** the grant, by a State, of protection on its territory to persons outside their country of nationality or habitual residence, who are at risk of persecution, serious human rights violations or other serious harm there. Asylum encompasses a variety of components, including protection from refoulement, permission to remain on the territory, enjoyment of rights and eventually a durable solution.<sup>88</sup> In States parties to the 1951 Refugee Convention/1967 Protocol, it includes enjoyment of the rights in Articles 2 to 34 of those treaties.

**Asylum-seeker:** an asylum-seeker is an individual who is seeking international protection whose claim has not yet been finally determined.

**Complementary protection:** various administrative or legislative mechanisms used by States to regularize the stay of persons falling outside the scope of the 1951 Refugee Convention or its 1967 Protocol, but who are nevertheless considered to be in need of international protection. See also *Subsidiary protection*.

**Criminal detention:** detention because of arrest or punishment of a person in respect of a criminal offence that carries a custodial sentence.

**Detention:** the deprivation of liberty in a confined place from which the person is not permitted or cannot reasonably be expected to leave at will or without authorization (See UNHCR-DG §5).

**Immigration detention:** the deprivation of an individual's liberty, usually of an administrative character, for an alleged breach of the conditions of entry, stay or residence in the receiving country.

**International protection:** the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of refugees and other categories outside their countries of origin,



who lack the national protection of their own countries. Such actions include: securing admission and stay, protection against *refoulement*; access to fair and efficient asylum procedures, humane standards of treatment, and the realisation of durable solutions. UNHCR is the only United Nations' agency with a mandate to provide international protection to refugees at the global level.

**Judicial review:** the review by a court of law of the decision to detain or to continue one's detention, where the court has the power to make a different decision than that made by the administrative body.

**Migrant:** there is no universally accepted definition of the term 'migrant.' It is usually understood to cover all cases where the decision to migrate is taken freely by the individual concerned and without intervention of any coercive external factors.

**Migrant worker:** *"a person who is to be, is, or has been engaged in a remunerated activity in a State of which he or she is not a national."* It does not include *"persons employed by international organizations or agencies, officials employed by a State outside its territory, State employees participating in development programmes and other co-operation programmes, investors, refugees and stateless persons (unless provided for in national legislation), students and trainees, seafarers and workers on an offshore installation."* (see Articles 2 and 3, CMW)

**Monitoring:** the process, over time, of regular examination, through on-site visits, of all aspects of immigration detention. The examination can involve all or certain categories of detainees held in one or more places of detention. Monitoring includes the oral or written transmission of the results of the examination, as well as recommendations to the authorities concerned and to other actors involved in the protection of persons deprived of their liberty at the national and international level. It also includes follow-up regarding the implementation of recommendations conveyed to the authorities.

**Non-refoulement:** a core principle of international refugee and human rights law that prohibits States from returning individuals in any manner whatsoever to territories where they may be at risk of persecution, torture, or other forms of serious or irreparable harm. The principle of *non-refoulement* is a part of customary international law and is, therefore, binding on all States, whether or not they are parties to the 1951 Refugee Convention or other relevant instruments.

**Persons of concern to UNHCR:** a general term used to describe all persons for whom UNHCR is mandated to provide protection and assistance and, together with governments, to find durable solutions. These include refugees, asylum-seekers, returnees, stateless persons, and, in many situations, internally displaced persons (IDPs).<sup>89</sup>

**Protection:** all activities aiming to achieve full respect for the rights of the individual in accordance with the letter and spirit of international refugee, human rights and international humanitarian law. Protection involves creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution and rehabilitation.<sup>90</sup>

**Refugee:** a person who meets the criteria under the applicable refugee definition, as provided for in international or regional refugee instruments, under UNHCR's mandate, and/or in national legislation. Article 1A (2) of the 1951 Refugee Convention, as amended by the 1967 Protocol, defines a refugee as *"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*

**Refugee status:** is a declaratory status, which means that the grant of refugee status declares or confirms that the person is a refugee, but it does not make him or her a refugee.

**Rejected asylum-seeker:** is a person whose protection claim has been rejected following a fair asylum procedure, including access to an independent appeal procedure.

**Separated child:** a child separated from both parents, or from his or her previous legal or customary care-giver, but not necessarily from other relatives. This may, therefore, include a child accompanied by other adult family members (See CRC GC 6 (2005), §7).

**Smuggled migrant:** a person who is the object of the offence of smuggling of migrants. The smuggling of migrants is *“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State of which the person is not a national or a permanent resident.”* (See Article 3, ASP)

**Stateless person:** *“a person who is not considered as a national by any State under the operation of its law”* (Article 1, CSSP). This may be the case either because s/he never had a nationality or because s/he lost it without acquiring a new one.

**Subsidiary protection:** is a term most commonly associated with the European Union’s Qualification Directive,<sup>91</sup> the status granted to a person who would face a real risk of suffering serious harm such as would attract protection against *refoulement* under international human rights law. Subsidiary protection should be additional and complementary to refugee status under 1951 Refugee Convention/1967 Protocol. See also *Complementary protection*.

**Torture:** is defined by Article 1 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) as: *“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for*

*such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”* Other international and regional treaties, as well as national laws, contain broader definitions of torture, covering a wider range of situations, in particular Article 7, ICCPR.

**Trafficked person:** a victim (or survivor) of the offence of trafficking in persons. Trafficking in persons is: *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”* Consent of the victim is irrelevant. (See Article 3, ATP)

**Unaccompanied child:** a child who has been separated from both parents and other relatives and is not being cared for an adult who, by law or custom, is responsible for doing so (See CRC GC 6 (2005), §7).

**Unlawful detention:** detention that takes place not in accordance contrary with national law. Detention that is lawful in domestic law yet incompatible with international law would also be considered unlawful detention. (See UNHCR-DG 3)

## ANNEX II: SELECTED REFERENCE MATERIALS

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